SUPREME COURT OF THE UNITED STATES.

No. 556.

OTIS BIGELOW, APPELLANT,

vs.

GEORGE A. ARMES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Original bill.—Filed Jan'y 23, 1877.*

In the supreme court of the District of Columbia, the day of January, 1877. In equity.

GEORGE A. ARMES, PLAINTIFF,
vs.
OTIS BIGELOW AND MARY R. BIGELOW, DEFENDANTS. } No. 5359. Docket 16.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff complains and alleges as follows:

Paragraph 1st.—He is a resident of the city of Washington, in said District, engaged in business as a real estate agent, and brings this suit in his own right.

The defendants are also residents of said District. Said Mary R. Bigelow is the wife of said Otis Bigelow, who is doing business in said city of Washington as a banker and note broker.

Paragraph 2d.—That on and before the 22d day of November, 1876, the plaintiff was the owner of certain real estate in said city, known as No. 1252, 8th street northwest (more particularly described as a part of lot 26 in square No. 400, with metes and bounds as hereinafter set forth) subject to an incumbrance made prior to his purchase of two
2 thousand ($2,000) dollars; and being such owner, he, on or about said 22d day of November, 1876, sold the same to said Otis Bigelow, subject to said incumbrance, at a price or valuation of five thousand and twenty-five ($5,025) dollars; said incumbrance of two thousand dollars being assumed by said Otis Bigelow as a part of the said consideration; and the plaintiff agreed to take, and said Otis Bigelow agreed to give to the plaintiff as payment therefore, a certain house and lot in this city known as No. 1138, Delaware avenue northeast, in this city (and more particularly described as part of lot fourteen, in square numbered seven hundred and twelve (712), beginning for the same on the west line of Delaware avenue, at a point fifteen feet 8 inches from the southeast corner of said lot, and running thence northwestwardly at right angles to said avenue one hundred and fifteen feet; thence south fifteen feet to a point 115 feet from said avenue; thence one hundred and fifteen feet to a point on said avenue fifteen feet southerly from the beginning, and thence to the beginning); and a certain tract of land containing seventy acres, more or less, near Fairfax Court-House in
3 the State of Virginia, sometimes known as the Windsor farm (and described as beginning at *at* a stake on the northwest side of the old Alexandria & Church roads, and pointed out by one Elbge as the place the corner called for formerly stood; thence with the eastern boundary of the Church road N. 19½° E. 78 poles; thence crossing said road with Farr's line No. 24½ E. 19 poles & 5 links to a stake in said line; thence N. 72° W. 52 po. to a stake in a field; thence N. 41¾ W. 42 poles to a stake & pile of stones in the out line, a boundary of W. T. Rumse's land; thence with said boundary S. 49° W. 131 poles & 5 links to a stake and pile of stones near Popeshead Run and on the northeast side of the aforementioned old Alexandria road; thence with said road, the meanders thereof, and binding therewith S. 56½° E. 45 poles & 12 links; S. 62 E. 27 poles & 15 links to the beginning), both of which

said pieces of property said Otis Bigelow claimed to be the owner of, and the sum of five hundred and twenty-five (525) dollars in money.

At the time of said transaction an informal memorandum was made with a lead pencil showing in general terms substantially the facts above set forth, excepting as to the minute description of the property, and was signed by the plaintiff and said Otis Bigelow. For particulars as to location, title, and minute description of said property on Delaware avenue, said Otis Bigelow gave to the plaintiff an old title deed purporting to describe the same, which is still in the plaintiff's possession, and a certificate of title made by an attorney of this court, which describes said property as above set forth; and said Bigelow also put the plaintiff in possession of the property; and for such particulars as to said land in Virginia, he gave to the plaintiff several old title deeds of the same, including the deed under which said Bigelow now holds said land, and referred the plaintiff to his (said defendant's) agent residing near the land, with whom the plaintiff has since corresponded with reference to the same, and to a gentleman in business in this city as conversant with the said particulars, from whom the plaintiff got the description of said land above particularly set forth by metes and bounds; but the plaintiff handed back to said Otis Bigelow said last-named title deeds for the purpose of enabling him to make the proper description of the land in the deed he was to give to the plaintiff, and for no other purpose. The plaintiff has since demanded said deeds as his property, but said Otis Bigelow, to hinder the plaintiff from his lawful remedy in the premises, refuses to deliver them up or to allow the plaintiff to examine them; and they are now, as the plaintiff believes, in his possession or under his control.

Paragraph 3d.—The said defendant, Otis Bigelow, pursuant to said agreement, paid the plaintiff, on or about the 24th and 25th days of November, 1876, several sums of money, amounting in all to five hundred and five dollars, as a part of the consideration for the plaintiff's said property.

Paragraph 4th. The plaintiff, on or about the 24th day of November, 1876, in pursuance of his said agreement, being the owner as aforesaid of said property No. 1252, 8th street (particularly described as part of lot No. 26, in square No. 400, according to subdivision recorded in the surveyor's office of the city of Washington, D. C., beginning at the southeast corner of said lot 26, and running south along the line of 8th street, sixteen feet and six inches; thence west ninety-two feet to an alley; thence north along the line of said alley sixteen feet and six inches; thence east ninety-two feet to the place of beginning), conveyed the same, subject to said incumbrance of $2,000, to said Otis Bigelow, by good and sufficient deed, wherein the sum of $5,000 is named as the consideration therefor, as will more fully appear by reference to said deed, as the same is recorded in liber No. 839, folio , of the land records of the District of Columbia, and which is made a part hereof; and said deed was accepted by said Otis Bigelow; but at the time of the delivery of said deed, which was on the said 24th of November, having then only received $405.00, a portion of the five hundred and five dollars aforesaid, the plaintiff requested said Bigelow, and it was understood and agreed between them, that said Bigelow would not have the same recorded until his deeds were delivered to the plaintiff. Nevertheless, said Otis Bigelow, not regarding said agreement and understanding to the contrary, and without first executing and delivering such deed or deeds to the plaintiff, and without the knowledge or consent of the plaintiff, did cause said deed to be recorded on the day, or the day after, it was delivered to him.

Paragraph 5th.—The plaintiff further says, that said Otis Bigelow, pursuant to said agreement, directed his clerk to make out a deed for said property on Delaware avenue, and one for said property in Virginia, and said clerk did, in pursuance of such directions, prepare said deeds, as the plaintiff has reason to believe, and does believe, naming in the deed for the property on Delaware avenue the sum of $1,500 as the consideration, and in the deed for said land in Virginia the sum of $1,000 as the consideration; but said Otis Bigelow has not executed and delivered them, or either of them, to the plaintiff, or any other deed or deeds of conveyance of said property, or any portion
8 thereof; and except the said sum of $505, received as aforesaid, said Otis Bigelow has failed and refused to fulfill his part of said agreement, and though often duly requested so to do, he still refuses; and the plaintiff says he has not, nor has any person for him, received from said Otis Bigelow the consideration agreed upon and stipulated for as aforesaid, nor the $5,000 expressed in his said deed, nor any portion thereof, nor any consideration, except as aforesaid, for his said property, and he avers that he has done on his own part all that he agreed to do, or that could lawfully or equitably be required of him in the premises.

Paragraph 6th.—The plaintiff further says that said Otis Bigelow now pretends that he did not fully examine the plaintiff's said property, and that he is disappointed in its value; and for such reasons declines to perform his agreement, which said pretences are frivolous and false in fact. As to said matters of pretence, the plaintiff avers that said Otis Bigelow had ample opportunity to examine said property, and the plaintiff is informed and believes, and so avers and expects to
9 prove, that the defendant did, in fact, examine said property, pending said negotiation, and within a day or two before said agreement was made. Said defendant therefore took said property with full and actual knowledge of all the facts in the premises. And the plaintiff avers that he did not enter into said agreement with the belief, nor does he now believe, that the consideration agreed upon as aforesaid was the full value of his said property; but that his object in so selling it was to raise money for immediate pressing purposes, and chiefly to relieve himself from the aforesaid incumbrance of $2,000, which he was and is unable to pay or carry; and would now seek a reconveyance and re'cis'on of the contract; but that he is unable to pay or carry; and would now seek a reconveyance and recision of the conto carry said incumbrance and repay to the defendant the five hundred and five dollars received from him as aforesaid.

Paragraph 7.—The plaintiff says that when said memorandum of said agreement was made it was entrusted to the possession and care
10 of said Otis Bigelow, who stated in substance that he would keep it safely; but said Otis Bigelow now informs the plaintiff that he has not it; and that "he tore it up and threw it into the waste-basket"; and the plaintiff charges that the conduct of said Otis Bigelow, in thus disposing of said memorandum, was fraudulent in its character, and that said paper was so torn up and disposed of with the fraudulent intent and purpose on the part of said Otis Bigelow, to delay hinder, and defeat the plaintiff from maintaining his rights in the premises.

Paragraph 8.—The plaintiff further says he has been informed and believes that said Otis Bigelow is about to dispose of all of his property and put it out of his hands; that he has recently been heard by several persons to state such to be his intention; and by so doing the plaintiff

avers that said Otis Bigelow would wholly defeat the rights of the plaintiff with respect to the matter here in controversy, and nothing could be taken in execution, nor could anything be in any manner realized on a judgment or decree against him; and the plaintiff has strong ground for belief upon information, and he will show the same to this court at the proper time, and he does believe, that said Otis Bigelow intends so putting his property out of his hands to avoid certain obligations now existing, and others growing out of his business transactions. Said Otis Bigelow has, in fact, personally stated to the plaintiff since this transaction arose, and only within the past few days, that if the plaintiff should get a judgment against him nothing could be got on an execution, and that there is a small judgment against him now upon which the parties cannot make anything.

In view of all the facts, it is respectfully submitted that the plaintiff has not a plain, adequate, and complete remedy at law in the premises, and he is advised that without the aid of this honorable court, with its equitable jurisdiction and powers, he is without remedy; but that should this court, notwithstanding these facts, be of opinion that the plaintiff ought to seek a judgment at law before the power of this court is fully exercised in the premises, it is competent for the court to retain this cause until such action at law shall be duly prosecuted to judgment and other formal proceedings had thereupon.

Paragraph 9.—The plaintiff says that of the consideration for his said deed to said Otis Bigelow there remains unpaid in value two thousand five hundred and twenty dollars, to which the plaintiff is now entitled, and which sum said Otis Bigelow ought, in good conscience and justice, to pay to the plaintiff for his said property, or convey to him said property on Delaware avenue, and said land in Virginia, and pay said twenty dollars in money according to agreement; and the plaintiff is advised that he has a lien on the property so conveyed to said Otis Bigelow for the balance of the consideration, which, under the circumstances in the premises, may now be declared and enforced by this honorable court, subject to rights accrued by reason of said prior incumbrance of $2,000.

Paragraph 10.—That the aforesaid property, No. 1252 8th street, was, when conveyed to said Bigelow as aforesaid, and still is, occupied by a respectable and prompt paying tenant under a rental of $30 per month, which said rent said Otis Bigelow has been collecting and receiving to his own use since said conveyance, and which he evidently intends continuing to collect; and the plaintiff respectfully submits that said Otis Bigelow ought to be restrained from collecting said rent, and that a receiver ought to be appointed to collect and bring the same into this court, here to abide the result of this suit.

Paragraph 11.—And the plaintiff further says that since said agreement, and the conveyance by the plaintiff as aforesaid, said Otis Bigelow has informed him that his said wife, Mary R. Bigelow, now refuses to sign said deeds. As to this, the plaintiff will show from facts and circumstances, and he avers that in truth it was contemplated, that in the performance of the aforesaid agreement all the deeds of the aforesaid property were to be given as his was given, with release of right of dower. And from like facts and circumstances the plaintiff believes he will show unto the court that any such refusal is by the advice and at the instance of her said husband; and the plaintiff is advised that if said Mary R. Bigelow persists in her refusal to join her said husband in said deeds the plaintiff is entitled to deeds in proper

form from said Otis Bigelow with damages, to be ascertained in the manner usual in such cases.

The defendant, Otis Bigelow, is required to answer the following interrogatories:

First interrogatory. Did you or did you not, on or about the 22nd of November, 1876, agree to give to the plaintiff the land in Virginia, and the house and lot on Delaware avenue in this city, referred to in paragraph 2 of this bill of complaint, and the sum of $525.00, in consideration that the plaintiff would give to you his house and lot known as No. 1252 8th street northwest, in this city, subject to an incumbrance of $2,000? If so, what part of said agreement has the plaintiff
15 fulfilled, what part has he not fulfilled; what part have you, and what have you not, fulfilled?

Interrogatory No. 2. State whether you have or have not paid to the plaintiff, or for his use or to his order, the full amount of the consideration expressed in the deed of the house and lot No. 1252 8th street northwest, mentioned in paragraphs 2 and 4 of this bill. If not, what amount have you paid? Have you given the plaintiff any consideration for his said property other than $505? If you claim to have done so, specify particularly what it was.

Interrogatory No. 3. Did you or did you not give to the plaintiff the old title deeds mentioned in paragraph 2 of this bill, as descriptive of the respective pieces of property on Delaware avenue in this city, and the land in Virginia, in question, and did you not refer him to your agent, John Thomas, esq., residing near said land in Virginia, and to Judge Willoughby for any and all particulars concerning said
16 land; and have you not said old deeds now in your possession or under your control?

Interrogatory No. 4. Did you or did you not give to your clerk or to any one instructions to make out deeds of conveyance of said land in Virginia and said property on Delaware avenue; and were not such deeds, or either of them, actually made out or prepared for signature by you or by your directions, and in pursuance of said agreement?

PRAYERS.

The plaintiff therefore prays as follows:

1st. That the defendant, Otis Bigelow, may be restrained by order and injunction of this court from selling, conveying, or in any manner disposing of or incumbering all or either of the pieces or parcels of land, or any portion thereof, referred to or described in paragraph 2 of this bill of complaint, until the further order of this court.

2d. That said Otis Bigelow, his servants, agents, and attorneys,
17 may be restrained by order and injunction of this court from collecting the rent of said house and premises No. 1252 8th street northwest, in this city, during this suit, and until the further order of this court; and that a receiver be appointed to collect said rent and bring the money into court, subject to further orders in the premises.

3rd. That said Otis Bigelow may be decreed to specifically perform his said agreement and make the necessary deeds of conveyance for said house and lot No. 1138 Delaware avenue, in this city, and said land in Virginia, described in paragraph 2 of this bill; or, in default thereof, that he pay to the plaintiff the sum of twenty-five hundred and twenty (2,520) dollars, as the balance of unpaid purchase money for said

property sold to said Otis Bigelow by the plaintiff, or such other sum as may in the proper manner be ascertained to be just and right in the premises.

4th. That it may be declared that the plaintiff has a lien, as an
18 unpaid vendor, upon said house and lot No. 1252 8th street northwest; and that such lien may be enforced by a sale of said property by and under the direction of this court, subject to said prior incumbrance of $2,000.

5th. That said Otis Bigelow may be directed to deliver into the clerk's office of this court, or unto the plaintiff, as this court may deem proper, the title deed made by one Windsor, for a certain tract of land on the Church road, and on the old Alexandria road, in Fairfax County, Virginia, containing some 70 or 72 acres, and here in controversy, and any and all other title deeds describing said lands which were delivered by said Otis Bigelow to the plaintiff, as stated in paragraph 2 of this bill.

6th. That for the purpose aforesaid all necessary accounts may be taken, inquiries made, and directions given.

7th. That the plaintiff may have such further and other relief
19 in the premises as the nature of the case may require. To which end the plaintiff prays for process against the said defendants, Otis Bigelow and Mary R. Bigelow, requiring them to appear and answer the exigencies of this bill.

The defendants to this bill are Otis Bigelow and his wife, Mary R. Bigelow.

GEO. A. ARMES.

RUFUS H. THAYER,
Solicitor for Plaintiff.

I do solemnly swear that I have read the above bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

GEO. A. ARMES.

Subscribed & sworn to before me this 29th of January, 1877.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

20 *Subpœna to answer.*

In the supreme court of the District of Columbia, Jan'y 29th, 1877.

GEORGE A. ARMES, COMPLAINANT,
against
O. BIGELOW ET UX., MARY R., DEFENDANT. } No. , equity docket.

The President of the United States to Otis Bigelow & wife, Mary R. Bigelow, defendants.

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill this day filed, and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness: D. K. Cartter, chief justice.

R. J. MEIGS,
Clerk, &c.,
By R. J. MEIGS, JR.,
Ass't Clerk.

MEMORANDUM.—That the defendant, herewith served, is to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

21 *Restraining order.*

The defendant is hereby restrained, as prayed in the bill, until further order to be made, if at all, after a hearing, which is fixed for the 8th day of Feb'y, 1877, of which take notice.

At chambers.

WYLIE, *Justice, &c.*

Marshal's return.

Sum'd and served both, Jan'y 30th, 1877.

A. SHARP, *Marshal.*

22 *Separate answer of def't Otis Bigelow.—Filed Feb. 6th, 1877.*

In the supreme court of the District of Columbia, the 6th day of February, 1877.

GEORGE A. ARMES, pl'ff.
vs.
OTIS BIGELOW AND MARY R. BIGELOW, def'ts.
} In equity. No. 5359. Docket 16.

To the supreme court of the District of Columbia, holding equity court for said District:

Paragraph 1.—Otis Bigelow, one of said def't, for himself only, in answer to plaintiff's complaint, says that he is willing, for the purpose of this answer, to admit all of plaintiff's statement in paragraph one, except the words "and note broker."

Paragraph 2.—In answer to the allegation, paragraph 2, defendant says that he has no knowledge that the plaintiff was the owner of the premises set forth at the time alleged, except from the plaintiff's statement, nor could he have, by any examination of the land records for the space of six months, and so informed the plaintiff.

For further answer, the def't says that on or about the middle of the month of November, 1876, plaintiff came into the office of def't;
23 that defendant stated to plaintiff that he, defendant, had several small pieces of real estate, including several farms in Virginia, which he would like to exchange for a large piece of real estate in Washington; that on the same day he showed plaintiff at least two houses and lots in Washington for that purpose, and also showed plaintiff papers containing a description of other property; plaintiff mentioned to defendant, on his part, several pieces of property for exchange. Afterwards, on or about the 22nd day of November, plaintiff came to defendant's place of business and desired def't to enter into an agreement in writing for an exchange, which defendant refused to do, saying that if plaintiff would examine defendant's property and give him time to examine the property of plaintiff, that he, defendant, would make plaintiff a fair and equitable exchange. Before leaving, plaintiff wrote on a scrap of paper, which is presented to this court, the following, wrote in

pencil: "Nov. 22nd, 1876.—I propose to give my house on 8th
24 , subject to $2,000, for one house on Del. av. & one farm,
Fairfax Co., Va., said house to be put in good repairs & condition,
or $650.00 cash," and handed the same to the defendant, who, regarding
it as a very indefinite proposal, threw it under his counter, but afterwards recovered it, to show to the plaintiff as his claim of its being an
agreement; that this defendant utterly refused to make an agreement
with the plaintiff, otherwise than to say let us take time and make a fair
trade, or words to that effect, and he expressly denies that he ever gave
said plaintiff possession of said premises, or any part thereof, under or
by virtue of said pretended agreement.

Paragraph 3.—As to paragraph three in plaintiff's bill def't answers,
that on or about the 24th day of November the plaintiff requested a
loan of ten dollars of the defendant, and that defendant did loan him
five dollars; that afterwards plaintiff came to defendant's office, in apparent great haste, and showed to the def't a bank notice of a note
which he said he was obliged to pay on that day, and that plaint-
25 iff's wife was about to be confined in childbirth, and that he,
plaintiff, had not means to pay the doctor, or nurse, or hardly to
buy the necessaries of life, and that, further, he owed his father a large
sum of money on a certain house on 8th street, which he was being
pressed to pay, and the said plaintiff otherwise besought the def't, by
an appeal to his sympathies, for an advance of five or six hundred dollars in anticipation of a possible trade; that this defendant did afterwards, upon the delivery of a deed in fee to him of the said property
on 8th street as security for the same, loan the said plaintiff five hundred dollars, which said plaintiff agreed to repay, and though said
plaintiff did request the defendant not to record the deed, the defendant did not promise to withhold it from record, but said that he would
record the same to secure himself, but that in payment of the money,
with interest at ten per cent. per annum, he would reconvey the premises to the pl'ff if no trade was effected; and said def't expressly alleges
that he recorded the said deed from pl'ff as security for the said
26 loan of $500.00, so made as aforesaid, and for no other purpose
whatever, and def't has repeatedly offered to reconvey the said
property upon a settlement of the account between them, which the
plaintiff has refused to accept.

Paragraph 4th.—Defendant denies all of paragraph four as is alleged
in plaintiff's bill of complaint, but says he accepted the deed only as
security for the repayment of the money loaned to the plaintiff, and so
stated to the plaintiff; and that though plaintiff did request the defendant not to record the deed, def't made no agreement not to record the
same, but, on the contrary, gave the plaintiff to understand that he did
not consider himself safe without putting the deed upon record, and
then and there stated to the plaintiff that if no trade was effected he
would, upon a repayment of the money loaned, reconvey the premises to
the plaintiff, which he ever has been & is ready and willing to do.

Paragraph 5.—In answer to paragraph 5th, def't says that he did di-
rect his clerk to prepare certain deeds with the view of an ex-
27 change with the said plaintiff, but they were not to be executed
or delivered until said trade was consum'ated; that as for the
other matters in said paragraph thereto appertaining, this defendant has
fulfilled all that he then and there ever agreed to do. Defendant admits
that he has not executed or delivered the two deeds mentioned in said
paragraph, and denies that he ever agreed to execute or deliver them,
and denies that he has failed or refused to fulfill any agreement so made

by him, and expressly denies that he ever made said pretended agreement.

Paragraph 6.—Defendant, in answer to paragraph 6, denies the same as alleged.

Paragraph 7.—In answer to paragraph 7, def't says that the said pretended memoranda of agreement was only a proposal by plaintiff to defendant for a trade, and not an agreement in fact, and he, after reading it, did tear said memorandum and throw the same into his waste basket as worthless; but that afterwards, when plaintiff came to def't's & asserted that it was an agreement which def't had accepted by
28 taking the same, def't found the principal part thereof, and showed it to the plaintiff, and has preserved the same, and def't denies that his conduct was fraudulent, or that any fraud was practiced, or was intended to be practiced, or that he had any interest to hinder or delay plaintiff whatever.

Paragraph 8.—In answer to paragraph 8, def't says that it is wilfully and maliciously false in substance, tenor, and conclusions, and defendant alleges that said plaintiff well knew it to be false when he alleged it in his complaint, that def't is assessed for over $50,000\frac{00}{100}$ in the District of Columbia besides his Virginia property, and is worth at least that amount over & above all liabilities; that the small judgment referred to is for about the sum of $16 for costs in a case where def't was plaintiff in a justice's judgment, which was appealed or settled, and it is absolutely false that the parties cannot make anything on said judgment, but the fact is that no execution was ever issued therein, nor has it ever been demanded.

Paragraph 9.—In answer to paragraph 9, def't denies the same as is therein alleged.

29 *Paragraph* 10.—In answer to paragraph 10, defendant admits that he has collected rent for the premises numbered 1252 8th street, and alleges that the same has been done with the full knowledge and consent of plaintiff to apply toward the repayment to him by plaintiff of the said sum of $500.00, so loaned as aforesaid, and he is, and he ever has been, ready and willing to account to plaintiff for the same, and denies that he should be restrained from the collection of said rent until he is fully repaid the amount of said loan, or that a receiver should be appointed for this or any other purpose.

Paragraph 11.—In answer to paragraph 11, defendant denies the same as is alleged.

To the first interrogatory, defendant answers in the negative.

In answer to the 2nd interrogatory, def't answers that he has not paid to pl'ff anything whatever on account of said pretended sale, and he denies that he ever made such agreement, or was bound to pay to plaintiff anything on account thereof, but alleges that the only money which passed was the said amount so loaned as aforesaid of
30 $500.00, for which he took said deed as security; that he has not given pl'ff any consideration for the same, nor agreed so to do, nor has he purchased or agreed to purchase the same, the said $505 not being a payment thereon, but a loan by def't to plaintiff.

In answer to the 3rd interrogatory def't says that all that took place between said parties in reference to the old deeds and said Thomas and Willoughby was for the purpose of enabling said plaintiff more readily to examine said property with view to a sale in future, and for no other purpose whatever, and to have them under his control. I think interrogatory 4 has been answered above. Said deeds were never completed, nor were they ever commenced under any agreement whatever, but were

directed to be prepared with the view of carrying out any agreement that might afterwards be made.

And defendant having fully answered said plaintiff's complaint, prays that this case be dismissed with costs.

OTIS BIGELOW.

31 P. B. STETSON,
Def't's Solicitor.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Otis Bigelow, one of the defendants in this case, says that he has read the foregoing answer and knows the contents thereof, and that the facts which are therein stated upon his own knowledge are true, and the facts which are therein stated upon information and belief he believes to be true.

OTIS BIGELOW.

Subscribed and sworn before me Feb'y 6th, 1877.

R. J. MEIGS, *C.*,
By R. J. MEIGS, JR., *Asst.*

32 *Separate answer of def't Mary R. Bige'oic.—Filed Feb.* 6, 1877.

In the supreme court of the District of Columbia, Feb'y 6th, 1877.

GEORGE A. ARMES, PL'FF. } Equity No. 5359. Docket
vs. } 16.
OTIS BIGELOW AND MARY R. BIGELOW. }

The defendant Mary R. Bigelow, for herself only, admits that she is the wife of Otis Bigelow, and a resident of the District of Columbia, and she further states in answer to said bill of complaint that she has no knowledge of the facts set forth in said plaintiff's complaint except from information, and she therefore, upon information and belief, denies the same, and leaves the plaintiff to prove the same.

And she prays that said bill be dismissed with costs.

MARY R. BIGELOW.

P. B. STETSON,
Solicitor for said Def't.

33 DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Mary R. Bigelow, one of the defendants in this case, says that she has read the foregoing answer by her subscribed, and knows the contents thereof, and that the facts therein stated upon her own knowledge are true, and the facts stated upon information & belief she believes to be true.

MARY R. BIGELOW.

Subscribed & sworn before me Feb'y 6th, 1877.

JOHN T. ARMS,
Notary Public.

34 *Order denying injunction, except, &c.—Filed Feb. 12th, 1877.*

Supreme court District of Columbia, Feb'y 12th, 1877.

GEORGE A. ARMS *vs.* OTIS BIGELOW ET AL. } Eq. Doc. 16. No. 5359.

This case came on to be heard upon the bill and answer, and after hearing counsel for the respective parties it is ordered, adjudged, and decreed that the motion for an injunction be and the same is denied except as to the property known and described in said bill as No. 1252 8th st., N. W., and as to that the injunction is sustained, so far as to prohibit the said Bigelow from selling or in any manner incumbering the same, until the further order of the court.

A. WYLIE.

35 *General replication.—Filed Feb. 15th, 1877.*

In the supreme court of the District of Columbia the 15th day of February, 1877.

GEORGE A. ARMES *vs.* OTIS BIGELOW AND WIFE. } In eq. No. 5359. Doc. 16.

The plaintiff hereby joins issue with the defendants.

R. H. THAYER,
Sol. for Plaintiff.

36 *Order extending time to take testimony.*

Supreme court of the District of Columbia, May 16th, 1877.

GEORGE A. ARMES *vs.* OTIS BIGELOW ET AL. } Doc. 16. No. 5359.

Upon application of the defendant the defendant may have until the 26th day of May inst. within which to take testimony in the above entitled case.

By the court.

I am the examiner in the above-entitled cause, but owing to prior engagements, I have been unable to go on with the defendant's testimony, although his counsel has requested me so to do on several occasions.

May 16th, 1877.

JOHN J. JOHNSON.

37 *Testimony of compl't.—Filed June 1st, 1877.*

Complainant's testimony.

In the supreme court of the District of Columbia.

ARMES *vs.* BIGELOW. } In equity. No. , Doc.

FOR COMPLAINANT.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that an examination of witnesses begun and held on the 3rd day of April, A. D. 1877, and continued from time to time,

by adjournment, until the 26th day of April, A. D. 1877, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at the office of Charles H. Armes, esq., F street, in the city of Washington, in said District, the within-named witnesses to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia wherein Armes is complainant and Bigelow defendant.

38 JOHN J. JOHNSON,
Ex'r in Chancery.

WASHINGTON, D. C., *Dec. 11th*, '76.

JOHN CAJAY:

Pay to Col. George A. Armes forty-eight dollars, being for four months' back rent, and he is authorized to receipt for the same in full of all account.

OTIS BIGELOW.

Mr. George A. Armes being the owner of the property.
OTIS BIGELOW.

39 *Notice as to examination of witnesses on the part of the plaintiff.*

In the supreme court of the District of Columbia the 6th day of March, 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW ET AL. } Eq. No. .

Please take notice that the plaintiff in the above-entitled cause desires the evidence to be adduced therein to be taken orally, and that he will proceed with the examination of witnesses in his behalf on Wednesday next, 7th instant, at 3 o'clock p. m., before J. J. Johnson, esq., examiner, at No. 633 F street, N. W., in this city, in room No. 2.

R. H. THAYER,
Sol. for Plaintiff.

To P. B. STILLSON, Esq.,
Sol. for Defendants.

Ordered, that the above-named day be set for hearing testimony in that case at the time and place therein named.

J. J. JOHNSON,
Examiner.

Service accepted, March 6th, 1877.

P. B. STILSON,
Def'ts' Att'y.

40 *Copy of notice to produce documents.*

In the supreme court of the District of Columbia the 24 of , 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW ET AL. } Eq. No. 5359.

The plaintiff desires the defendant Otis Bigelow to produce, at the taking of testimony in this cause, the following documents, to wit:

1st. The deed of conveyance made by Geo. A. Armes and wife the 24th of November, 1876, conveying to Otis Bigelow part of lot numbered 26, in square numbered 400; said property being also referred to in the bill of complaint in this cause as number 1252 8th street, northwest.

2nd. The title deeds to a certain tract of land near Fairfax Court-House, in the State of Virginia, described by metes and bounds in the said bill of complaint, which said deeds were, in November, 1876, delivered to the plaintiff by said Otis Bigelow, and subsequently were
41 handed back to said Otis Bigelow, one of which deeds is executed by one Windsor, and the other being the deed whereby said Otis Bigelow acquired title to said land.

R. H. THAYER,
Sol. for Plaintiff.

To P. B. STELLSON, Esq.,
Sol. for Defendants.

42 EXHIBIT C.

This indenture made this fourteenth day of July, in the year of our Lord one thousand eight hundred and seventy-three, between Benedick Milburn and Martha Milburn, his wife, of the city of Washington & District of Columbia, of the first part, and Louis L. Beach, of the same place, of the second part, witnesseth:

That said party of the first part, for and in consideration of the sum of sixteen hundred dollars in lawful money of the United States to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns, forever, all that piece or parcel of ground lying and being in the city of Washington, aforesaid, and known on ground plan of said city as part of original lot numbered fourteen (14) in square num-
43 bered seven hundred and twelve (712), beginning for same in the west line of Delaware avenue at a point eight (8) inches from the southeast corner of said lot fourteen (14); thence northwestwardly at right angles to said avenue one hundred and fifteen (115) feet; thence due north fifteen (15) feet; thence by straight line to a point in Delaware fifteen (15) feet from place of beginning; thence southeastwardly on the line of Delaware avenue to the place of beginning fifteen (15) feet, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, and claim, whatsoever, either at law or in equity, of the said party of the first part of, in, and to the said piece or parcel of land and premises.

To have and to hold the said piece or parcel of land and premises, with the appurtenances unto the said party of the second part, his heirs
44 and assigns, to his and their sole use, benefit, and behoof, forever.

And the said Benedict Milburn, for his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he, the said party of the first part, and his heirs shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances, unto the said party of the second part, his heirs and assigns, from and

against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any of them, & from and against all lawful claims. And further, that he, the said party of the first part, and his heirs shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances, unto the said party of the second part,
45 his heirs or assigns, as the said party of the second part, his heirs or assigns, or his counsel learned in the law shall advise, devise, or require.

In testimony whereof the said party of the first part, have hereunto set their hands and seals on the day and year first hereinbefore written.

B. MILBURN. [L. S.]
MARTHA MILBURN. [L. S.]

Signed, sealed, delivered in the presence of , having first been duly stamped.

E. C. WEAVER, *J. P.*

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Erastus C. Weaver, a justice of the peace in and for the county aforesaid, do hereby certify that Benedict Milburn and Martha Milburn, party to a certain deed bearing date on the 14th day of July, A. D. 1873, and hereto annexed, personally appeared before me, in the county aforesaid, the said Benedict Milburn and Martha Milburn, being per-
46 sonally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Martha Milburn, the wife of said Benedict Milburn, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal this 14th day of July, A. D. 1873.

E. C. WEAVER, [SEAL.]
Justice of the Peace.

Endorsement on deed.

Received for record on the 18th day of July, A. D. 1873, and recorded in liber No. 717, folio 301, one of the land records for Washington County, in the District of Columbia, and examined by

S. WOLF,
Recorder.

47 EXHIBIT D.

I have examined the title to part of lot fourteen (14) in square No. 712, beginning for the same on the west line of Delaware avenue 15 feet 8 inches from the southeast corner of said lot and running thence northwestwardly at right angles to said avenue 115 feet; thence south 15 feet to a point 115 feet from said avenue; thence 115 feet to a point on

said avenue 15 feet southerly from the beginning, and thence to the beginning, and report the same good and unencumbered in Otis Bigelow.

Tax receipts to be produced.

Fee paid.

WM. R. WOODWARD.

23rd NOVEMBER, 1876.

48 *Testimony for complainant.—Filed June 1st, 1877.*

GEORGE A. ARMES vs. BIGELOW ET AL. } Equity.

APLIL 3RD, 1877.

Met pursuant to notice; present, counsel on both sides; when

CHARLES H. ARMES, duly affirmed, says: I am acquainted with the parties to this suit; I am a brother of the plaintiff. On the 22nd of November, 1876, I was called upon by the plaintiff to witness a transaction between himself and the defendant, Otis Bigelow, and I went with him to Bigelow's office. They at once began talking about a trade of some real estate. The plaintiff wanted a thousand dollars in money difference between his house and a house of Bigelow's on Delaware avenue, in this city, and a farm in Fairfax Co., Va., of some 72 acres. They talked about the transaction a good deal as to whether Bigelow would give the thousand dollars. Bigelow——

(The defendant's counsel here asks plaintiff's counsel what he proposes to prove on that point.

The counsel says the substance of the agreement between the plaintiff and defendant.

49 The defendant's counsel asks if the agreement was in writing.

The witness says up to this time there was no writing, and I will state all the writing that took place.

The defendant's counsel objects to all parol testimony on the ground that it is writing and that is the best evidence.

2nd. Parol testimony of the agreement is improper and irrelevant in the case.)

Witness, resuming, says: The defendant objected to giving the $1,000, and said he would only give $500 and the house on Delaware avenue, and the farm in Fairfax Co., Va., for the plaintiff's house, and Otis Bigelow, the defendant, distinctly offered to give the plaintiff his house on Delaware avenue, which he had shown the plaintiff, and the farm in Virginia & $500 for his house on 8th street in this city.

(Defendant objects to the testimony last given on the ground that it is inadmis'able under the allegations in the bill in addition to the former objections.)

50 Witness, resuming, says: And assume the incumbrance of $2,000 on the 8th street house. The plaintiff agreed to take it and suggested that they draw up writings, but the defendant said there is no use of any writings. I will do what I say. The plaintiff in the meantime commenced writing. I will say here that Bigelow talked at length and to me personally about the farm in Virginia, described it, told how he got it, stated that he had a litigation about it at Fairfax Court-House, Va., in which he was finally successful, and got a deed from the court for this land. He talked about the value of the land. He told me what old man Windsor paid for it, who formerly owned it, and described the

location of it as on the old Alexandria road, the old church road, and spoke of its advantages as lying near both the railroad station and Fairfax Court-House. No, he did not say railroad station, he said Fairfax station. After the terms were verbally agreed upon as I have already stated, the plaintiff wrote with a pencil this:

(Contents of the writing objected to on the ground the writing is the best evidence.)

51 "November 22d, 1876.—I propose to give my house on 8th street, subject to $2,000, for one house on Delaware avenue and one farm in Fairfax Co., Va." And at that point a discussion arose between them in reference to the allowance of a sum by the defendant for repairs on the Delaware avenue house, as Bigelow had stated that the house was somewhat out of repair. The plaintiff claimed that $150 would be a reasonable sum to put the house in good repair, and urged and insisted that Bigelow should allow it, and commenced adding to what I have stated above the words "said house to be put in good condition and repairs or $150." At that point Bigelow declared that he would not allow $150 for repairs, that it would not cost anything like that sum. He said he thought it could be done for $25, and that he would allow that amount and no more. The plaintiff still insisted upon having more, but Bigelow still refused. It was then stated by Bigelow &

52 agreed by the plaintiff that the sum of $25 should be given by Bigelow as the money difference in the exchange, and that nothing more should be said about repairs; that is, each party should do his own repairs or not make any. When this conclusion was reached, the plaintiff drew a pencil mark through what he had written about the $150 being allowed for repairs, namely the words "said house to be put in good repairs and condition or $150." So that the writing was when signed as follows:

(The defendant objects to this parol evidence in the place of the written agreement.)

"November 22nd, 1876.—I propose to give my house on 8th street, subject to $2,000, for one house on Delaware avenue and one farm in Fairfax County, Va., & $525 cash." This was signed by the plaintiff and handed to the defendant Otis Bigelow, who after reading it wrote upon it the word "accepted" and signed his name to it. He then handed it to me saying, I suppose you want to keep this. I said no, it

53 makes no difference, I will entrust it to your care. He took it and said well, I will put it up here for safe-keeping, indicating a place behind his counter. A day or two afterwards, he came to my office and asked me if an abstract of title to the Virginia farm would be insisted upon. He referred to the fact considerable expense in getting one. He referred to the fact that he held under a deed from the court, and that old man Richard Windsor, well known to me and whom I had stated to him that I knew, formerly owned the land. I told him it would be better to have the abstract. I did not doubt that he acquired the title as he stated, and that Windsor had owned the farm, as I had seen the deeds in the possession of my brother, the plaintiff, and they were before us at the making of the agreement. I was the attorney and agent of the holder of the said incumbrance on the 8th street house, and had the notes in my possession, and was charged by my principal with the collection of the interest thereon

54 when due and with the collection of the principal when deemed advisable, the notes being then & now long overdue. The interest is payable semi-annually, on the 1st of Jan'y and July. In the latter part of December, 1876, Mr. Bigelow came to my office, knowing that

I was such agent, and told me he was expecting to be absent from the city about the 1st of Jan'y, and asked when I would want to collect the interest on those notes. I asked him if he would, under the circumstances, pay it before the exact date it was due. He said he did not object to a few days only. This was only two or three days before Jan'y 1st, and I went to his bank that same day and he paid me $100, being the interest on those notes. He, at the same time, talked about the payment of the principal. He said he could pay it almost any time, but would like 30 or more days' notice before we called upon him for the money. I then thought of collecting it in the month of Feb'y following,
55 and asked him if it would suit him to pay it in that month, and he said it would. I then expected to collect it in Feb'y (what witness thought objected to), but it has been concluded to let it remain for the present as an investment (objected to by defendant's counsel), and no demand for the principal has been made. At or about that time Bigelow called my attention to the fact that he had taken out an insurance policy in his own name on the 8th street house. I reminded him that the insurance on his house ought to be for the benefit of the holder of this incumbrance of $2,000. He acquiesced and suggested that I take the policy to the insurance agent and have it changed so that the loss, if any should occur by fire, should be paid to my principal who held the notes. But I suggested to him that as he contemplated taking up these notes in Feb'y, that the policy be altered only so that the loss, if any, might be paid to the holder of these notes, whoever that
56 might be. He adopted the suggestion and handed me the policy to take to the agent to have such alteration made to that effect; and accordingly wrote upon the policy in pencil for the agent to change the policy to suit me. The agent did so change the policy, and I took it back and showed it to Mr. Bigelow, who adopted my suggestion that I should retain the policy as the agent of the present beneficiary, and I now have it in my possession. A week or two subsequently I learned that Bigelow wanted to back out of this bargain for the trade. I called upon him to see what reason he had for it. He said the 8th street house was not in a' good condition as he thought it was, and that he would only give one of said pieces of property and the $525; that we could have either the farm or the house and the $525, and offered me a check for $20, payable to the plaintiff, as the balance of the money not already paid if I would accept it with either one of said pieces of
57 property. I asked him if he had not agreed to give both pieces of property. He then showed a disinclination to *to* talk about it and I left his office. Shortly afterwards the plaintiff called to see me in endeavoring to effect a settlement, but could not; and I learned that Bigelow——

(Objected to anything learned from the plaintiff; Otis Bigelow was not present.)

Witness, resuming, says: Stated to the plaintiff that perhaps he, Bigelow, and I could effect a settlement of this matter. Accordingly, on the 17th of Jan'y, 1877, I called upon Bigelow at his office, and we talked the matter over. He made the same offer, and I asked him the same question: if he had not agreed to give both pieces of property and the $525. He did not deny it; and I asked him where the agreement, or rather where the memorandum, was. He said he hadn't it; that it was torn up and thrown into the waste-basket.

Adjourned till the 10th inst. at 2 p. m.

J. J. JOHNSON, *Ex'r.*

Met pursuant to above; present, counsel on both sides; when the examination was adjourned till Monday next at 3 p. m.

58 J. J. JOHNSON, *Ex'r.*

Met pursuant to adjournment. Present, counsel for complainant, the counsel for defendant being absent.

The examination-in-chief was resumed as follows:

On the 17th of Jan'y I called on the defendant at his office, as stated in the conclusion of my last examination, in accordance with the suggestion from him that he and I might be able to perfect a settlement of this matter. I asked him to produce the written memorandum; he said, "I tore it up, and threw it in the waste basket." I suspected that, if torn up, it was not done in good faith or with any good purpose, and asked him if he could not find the pieces. He said he had a portion of it, and produced the first few lines, being that portion which he exhibited to the court. I asked him if he could not produce the balance; he said, "No" hesitatingly, and in such a manner as to increase my suspicion, so that after a few minutes' more conversation I again asked

59 him if he could not produce the balance of that paper. I don't remember the exact form in which I put the question. I might have said, and think I did say, "Don't you think the balance can be found?" but I do remember distinctly that his answer was—he said this—"It may be in the waste basket yet, as it hasn't been emptied." I said something to cause him to make an effort to produce it, and he became excited, and refused to do anything about it. From this I concluded the agreement had been recently *been* torn up. At a previous interview with Mr. Bigelow, I asked him, in effect, why he had recorded the deed from the plaintiff, as I understood that he had agreed not to record it until he delivered his deeds of the house on Delaware avenue and the farm in Virginia. He said that the plaintiff had requested him not to record it, but that he did not tell the plaintiff that he would not.

60 He said he had paid the plaintiff $500, and that he had nothing to show for it, and he did not feel safe without putting the deed on record. One day, in a conversation with the plaintiff about these matters—I think early in Jan'y, or perhaps when I called for the interest money—Mr. Bigelow told me he had made out a deed for one of these pieces of property on a form that was signed in blank by his wife before she went to Europe; but that, thinking that such a deed was illegal, had torn it up, and had had new deeds made out. In my former testimony I see, in looking over it, that I stated that on the occasion of the agreement the old deeds were before us. I do not mean to say litterally they were on the table in our sight while the writing was being made, but they were in the possession of the plaintiff, and were referred to specifically by Mr. Bigelow in his description of the property. I remember we had an extended conversation with reference to the roads

61 touching this land, and he referred also to Judge Willoughby, who, he said, had conducted the suit for him in which he acquired title to the farm. The farm described in the bill I know from the general description given of it by Mr. Bigelow is the one referred to in that negotiation.

Adjourned till the 19th inst. at 1 p. m.

J. J. JOHNSON, *Ex'r.*

Met pursuant to above; present, counsel on both sides; when the examination-in-chief was resumed as follows:

I want to add that the notes of A. J. Chipman, referred to in the pol-

icy of insurance, are the incumbrance on the property assumed by Bigelow. They are secured by a deed of trust on the 8th street property, and were made by Chipman prior to his sale of the property to the plaintiff. I wish also to state that, in addition to the statement of Bigelow to me that he recorded the deed because he considered it necessary on account of his having paid the $500, he said
62 the law of the District allowing six months for recording deeds gave the plaintiff the power to sell it to somebody else; that he therefore thought it necessary to place it on record.

Cross-examined by Mr. STITTSON:

Q. Are you an attorney-at-law?

A. I am.

Q. Have you acted as counsel for the plaintiff in this case?

A. I have acted more as his friend than as his counsel. I have never been retained as his counsel in this case.

Q. Has any other attorney taken any action in the case, either in court or before the examiner, except yourself?

A. Mr. Thayer has appeared as counsel.

Q. What has he done as counsel, either before the examiner or in court?

A. He has read all the papers in the case.

(Question repeated.)

63 A. He has appeared in person before the examiner at each hearing until to-day. I look for him here now. He has regularly entered his appearance at court, signed the papers in the case after reading them.

Q. What has he done in open court, if anything?

A. I have appeared.

(Objected to.)

Q. What has Thayer done in open court, if anything?

A. At his request——

(Objected to.)

(Question repeated.)

And read the papers.

(Objected to.)

Q. What did Thayer do in open court, if anything?

A. I don't know of his appearance, personally.

Q. What did you do in open court, if anything?

A. Read the papers, as I have stated.

Q. What else?

A. The record will show.

Q. What else did you do in open court, if anything?

A. Made a motion, I believe.

Q. For what?

A. The record will show.

Q. For what?

64 A. For an order on the defendant to deliver in the clerk's office certain deeds claimed in the bill to have been delivered by the defendant to the plaintiff.

Q. For what else, if anything?

A. If anything else, the record will show.

Q. For what else, if anything?

A. I don't remember anything else.

Q. Did you not appear in open court and argue a motion for an injunction in this case, as counsel for the plaintiff?

A. That is the occurrence I had reference to when I mentioned the reading of the papers.

(Question repeated.)

A. I did, at the request of Mr. Thayer.

Q. Was Mr. Thayer there?

A. He was not.

Q. Are you a brother of the plaintiff?

A. I am, and so stated in my direct examination.

Q. Who holds the $2,000 note and deed of trust on the 8th street property?

65 A. My father, J. O. Armes, of this city, boarding recently at the Masi House, 13th st.

Q. Where now?

A. I think he went to Baltimore yesterday.

Q. Where is his residence in the city now?

A. He has no permanent residence in this city. He left the Masi House yesterday, where he has been stopping when in town.

Q. Had he been boarding at the Massi House up to the time he went to Baltimore?

A. He has been boarding there for some weeks. He has boarded at different places in the city; it is impossible for me to say how long at any one place. He considers this place home, but travels a great deal.

Q. Had he been boarding at the Massi House up to the time when he went to Baltimore yesterday?

A. He had been boarding there for some weeks up to that time.

Q. Was he boarding there the day before yesterday?

A. I think he was.

Q. Where is the Masi House?

A. On 13th st., as I have stated.

Q. Between what streets?

A. Between G & H streets, next door to the Baptist church.

66 Q. Have you referred in your testimony to more than one trade between the plaintiff and defendant for the 8th st. property?

A. I have referred to but one and there was but one.

Q. Have you referred to but one memorandum or writing of contract in reference to the trade of the 8th st. property?

A. There was but one writing which I have described.

Q. Was that the same writing purported to be set out in the bill?

A. That is the writing refer'ed to in the bill.

Q. Was that writing produced in open court before his honor Judge Wylie, on the motion for an injunction in this case?

A. A portion of it was.

Q. Was there a paper in the handwriting of the plaintiff written with a pencil shown to you and the court in the argument of the motion for an injunction?

A. A paper was shown which I think was a part of the paper above referred to, and was I believe in the plaintiff's handwriting, but it was not the whole of that writing.

67 Q. Was that the identical that the plaintiff wrote in the defendant's house at the time of the pretended trade to which you have testified in your direct examination?

A. I believe it was.

Redirect:

I will state that I would have appeared as co'nsel in this case from the

beginning but for the fact that I did not wish to appear in reading testimony given by myself.

C. H. ARMES.

GEORGE A. ARMES being duly sworn, says:

Q. State if you are the plaintiff in this case & what your business is.

A. I am, and my profession is real estate and claim agent.

Q. State the facts and circumstances out of which this litigation arises.

A. On or about the 10th of Nov., 1876, I happened to be in Bigelow & Benjamin's bank, and Mr. Bigelow called me one side & stated he had two small houses he would like to exchange for my house on 8th street. I remarked, "If you can give me enough cash difference
68 I will think it over," & he said, "I will give you $500." I told him they would have to be good houses or I would not exchange. Several days passed when I happened in the bank again, & he said if I would go and look at his houses he would give me $500 and a note for something more. I had not time to go with him then, but on or about the 18th I drove by the bank & said I would go and see the houses spoken of. He went with me & showed me one on Delaware avenue which I accepted at a certain price, & then called to see another on Capitol Hill which he represented as bringing a very good rent and by a permanent tenant.

Q. State what you mean by accepting the house.

A. As one of the pieces of property he offered to exchange, in addition to assuming the mortgage on my property. I accepted it at $1,500. The Capitol Hill house was in such a dilapidated condition that I told him I did not want it at any price, and then he proposed to give me a farm near Fairfax Court-House, Va., containing 72 acres, in place
69 of the house on Capitol Hill. I told him that I would find out. After ascertaining the condition and location of the land, I called at the bank and informed him that I would give him my house on 8th st. subject to an incumbrance of $2,000 for his house on Delaware avenue and his farm in Virginia & he pay me $1,000 difference, $500 cash & his note for the balance, without specifying any particular time. He then told me he had been up to the 8th st. house & that a friend of his had looked at it also, and he found that the door-bell wanted fixing & some other little repairs and he did not think it was worth over $500, and his two places clear of incumbrance difference, and handed me two deeds of the farm, one from the court and one from Mr. Minor, I believe, and one to the Delaware avenue house to him, referring me to Mr. Willoughby who he said could tell me all about the farm. After seeing Mr. Willoughby I went back to the bank and asked my brother. After I went to see Mr. Willoughby I called by and got my
70 brother to go to the bank with me.

(Mr. Stillson requests that the testimony be taken down as the witness states it.)

Witness resuming: I asked my brother to go into the bank with me, as I was about making a trade with Mr. Bigelow for my house on 8th st., for his farm & his house on Delaware Avenue. We three met in the back room of the bank, and after an hour or two discussion Bigelow finally agreed to give me the farm alluded to and a house situated on Delaware avenue, assume the $2,000 incumbrance on my 8th st. house, pay me $500 cash, and put his house in good repairs; and after that was settled he went behind the counter, and I went up to the desk and remarked that he had better have a memorandum of this in writing. He said no, it was not necessary, he fairly un-

derstood it; then some discussion arose if he would not allow me so much for repairs. I took up a lead pencil and a scrap of paper and wrote as follows, as near as I can remember: "I propose to give
71 my house on 8th st., subject to an incumbrance of $2,000, for your house on Delaware avenue, and your farm, in Va., and $500 cash, and you allow me in addition $150 for repairs on the Delaware ave. house," & passed it to him, and after reading it he declined. I said, "What will you allow?" He scratched out mine and put in $25 for repairs and signed the agreement or memorandum, & I signed it too; my brother being present at the time, who read it and handed it over to Mr. Bigelow, saying he might as well keep that. Then he asked me if I had an abstract. I told him I could get one from Mr. Morsell, & I asked Mr. Morsell to try and get me one within three or four days, & Bigelow stated he would have one made by Mr. Woodward, for the Delaware avenue house, & he could get a certificate that the farm was all clear & would give me a warranty deed for it, as soon as his wife returned to the city. He obtained his abstract or certificate the next day, I think, from Mr. Woodward, and asked me if had mine, I told him no, as I was not in any particular hurry, that I had given Mr. Mor-
72 sell several days to make it. He remarked, "I will see Mr. Morsell and try and hurry him up, as I want this matter settled as soon as possible." I afterwards learned he did see Mr. Morsell, who had the abstract completed one or two days sooner than I had requested. On or about the 24th Nov., I signed the deed. My wife and I signed the deed of the 8th st. house to Otis Bigelow. I told him that I had a note due in the bank and if he would let me have $400, I would give him my deed to hold until his wife returned, on conditions he would not record it. So he gave me $400, and agreed not to record my deed, ordering at the same time, the clerk to make out the deeds of his property to me, which he stated would be handed me immediately on his wife's return to the city. The next day I called in and asked him if he could spare another $100, he at once handed it to me, & then gave me back the deeds of the farm and house on Delaware avenue, stating that he had com-
73 pleted my deeds and everything ready just for his wife's signature. These deeds were in an envelope and the envelope marked Col. Armes' papers. About ten days passed, when he met me on the street and asked me if I had the deeds of the farm with me. I told him yes. He said he wanted to make some correction, some reference, and asked me to let him have them, which I did. On or about the 15th of December, I called in the bank again and asked him for the money to repair the house; that I wanted to rent it. It was on or about the 11th instead of the 15th of December. He said, "I have not the money convenient, but I will give you an order on the former tenant, who is over here in the Patent Office, and owes me nearly $50 back rent." I asked him if he thought he was good & I could get the money; he said O, yes, he was good, that I could have the balance over the $25 he agreed to give for collecting it. I told him to give me the order
74 and I would try. He gave me the order. (The same is herewith filed and marked Exhibit A.) I forgot to mention that he gave me the key to the house when I handed him the deed. I had the house immediately repaired and advertised for rent. When I learned of his wife's arrival in the city I called on him for the deeds to the farm and house he agreed to give me & the money for the repairs of the house, which I was unable to obtain from the party he had given me an order upon, as he claimed he did not owe Mr. Bigelow any back rent at all. Mr. Bigelow immediately wrote a check for $20, and interlined in the

check that it should be in full of all demands, provided I would accept the farm or the house, instead of both pieces of property, as formerly agreed upon, as he had talked with several of his friends, who said that the 8th st. house was not worth as much as he first supposed it was. I declined to accept the check or one of these pieces of property as a settlement, but demanded both, which he declined to give, and stated
75 that he would go into the courts first, before he would deed me both pieces of property, stating I would have the costs to pay and in the end I would not get anything, as he could dispose of my house at any time, and that he had already recorded the deed, & further, that there was a judgment of sixteen dollars that could not be made, and I could not make anything out of him if I got judgment.

Q. What repairs did you make on the Delaware avenue house after this agreement was made?

A. I had it cleaned and all necessary plastering done.

Q. Did you give Bigelow any note for the $400, you have stated you got of him?

A. I did not. Nothing was said about a note, or ever refunding any of said money.

Q. Nor of the $100, you got of him after that?

A. No.

Q. Had he given you any other amounts other than these two sums?

A. Not on this transaction. I made the repairs after I conveyed
76 the 8th st. house to Bigelow. The number of the 8th st. house is 1252 n. w. I had no other property on 8th street. The farm was formerly owned by Richard Windsor, the Windsor tract.

Q. State whether you did or did not borrow the $500 from Mr. Bigelow?

(Objected to.)

A. Not at that time.

Q. Did you at any time?

A. Something over a year ago I borrowed from him $500, and gave him my note, which has been paid.

Q. The $500 referred to in the above question is the $400 and the $100, as *as* above mentioned by the witness. Was there anything said as to the purpose for which this money was paid by Bigelow. In other words how did Bigelow come to let you have it?

A. He gave it to me as a payment of difference in the exchange of property.

Q. If you mean this exchange of property say this. What I mean for the witness to state specifically what property or what transaction he refers to?

A. This money was given me as a difference in exchange of his
77 farm in Va. and his house on Delaware avenue for the 8th st. house.

Q. Of the $525 that he agreed to pay how much have you received?

A. $505 in cash.

Q. When did you receive the five dollars?

A. The five dollars was given me the day the abstract was given.

Q. Did you convey to Bigelow the 8th st. property in pursuance of the aforesaid agreement?

(Objected to, on the ground that it calls for conclusions and not facts, which can'ot be proven in that way and other grounds before stated.)

A. I did.

Q. State the purpose for which the old deeds were given by Bigelow

to you & the payment of the $505, whether or not it was in pursuance of the said agreement?

(Objected to.)

A. The deeds were given to me, as the bargain was considered closed, in exchange of both properties, & the deeds of his property to me were al' ready to be delivered one with the exception of his wife's sig-
78 nature & so understood at the time, & afterwards I only loaned him the old deeds of the farm.

(The above testimony was taken subject to all objections to be made upon the argument of the case to the court.)

No cross-examination.

Adjourned till Tuesday next, at 1 p. m.

J. J. JOHNSON, *Ex'r.*
GEORGE A. ARMES.

Sworn and subscribed to before me this 26th of April, 1876.

J. J. JOHNSON, *Ex'r.*

Met this 26th day of April, 1877, when the counsel for complainant says he did not consent to the , testimony subject to all exceptions to be made at the hearing.

C. H. ARMES recalled, and says: Exhibit C. H. A. I personally served on Mr. Stilson, on the 24th March, 1877, notice to produce the papers of which this exhibit is a true copy.

(Counsel for complainant here calls for the production of the above papers.)

79 (Mr. P. B. Stilson states in answer to said cal —1st, that they are matters of record and not subject to notice; 2nd, that he has no such papers.)

Counsel for complainant offers in evidence the insurance policy referred to above in the testimony taken up by Otis Bigelow on the 8 'h st. house, and marked Exhibit B; also the old deed of the Delaware avenue property, which was handed by Bigelow to the plaintiff, as claimed in the bill, and marked as Exhibit C; also the abstract of title for the same property, mentioned in the plaintiff's testimony, and marked Exhibit D.

C. H. ARMES.

Sworn and subscribed to before me, this 26 day of April, 1877.

J. J. JOHNSON,
Ex. in Cha'ry.

GEORGE A. ARMES recalled, and says:

Q. State whether or not anything, and, if anything, all that was said when you got the $400 about a loan of the money.

80 A. There was nothing said in regard to any loan whatever. But as I had some money to pay out, and his deeds were not ready to be delivered to me, I asked him to let me have the $500 at once, that $400 would do now, and I would call in to-morrow for the other hundred, and handed him my deed, stating he could have the deed in his possession, provided he would not have it recorded until his wife returned. And it was understood at the time between us both (objected to as to what was understood, defendant's counsel claiming he should confine himself to what was soid and done) that the exchange of property was made, and that I should have the deeds for the farm and house upon the arrival of Mrs. Bigelow.

Q. What did you mean by handing him the deed?

(Objected to upon the same ground.)

A. I meant that, as it was his property & the trade closed, he was entitled to it, and only trusted to his honor as to the delivery of his deeds.

Q. State what you now claim to be due from Bigelow?

(Objected to on the same ground.)

A. I now claim the house and farm which he agreed to give, as a difference in the property, which he has failed to do, or $2,500 in
81 money. He has paid me all the money difference he agreed to, with the exception of what he agreed to give me for the repairs of the house, $20.

Q. Did you enter upon possession of the Delaware avenue house in acceptance of a part of the fulfillment on Bigelow's part of the agreement?

(Objected to on the ground that he should state what he did, only leaving the court to find the conclusions.)

A. I did, and he gave me the key of the house, which I advertised for rent as my own property. He gave me the key & the old deed at the same time.

Q. Was anything said when you received the $100, about that sum being loaned?

A. There was not.

GEO. A. ARMES.

Sworn and subscribed to before me, this 26th of April, 1877.

J. J. JOHNSON,
Ex'm. in Cha'ry.

It is agreed that the counsel for the defendant shall have 20 days to take his testimony.

J. J. JOHNSON,
Ex. in Cha'ry.

82 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John J. Johnson, examiner in chancery, do hereby certify that, in pursuance of the annexed notice, the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statement of the witnesses, at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence, and in the presence of the respective counsel, who were then and there attending, the witnesses, having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any matter interested therein.

J. J. JOHNSON, *Ex. C.*

83 *Deposition behalf def't.—Filed May* 28, '77.

In the supreme court of the District of Columbia.

GEORGE A. ARMES
vs.
OTIS BIGELOW ET AL. } In equity, No. . Doc.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that an examination of witnesses, begun and held on the 18th day of May, A. D. 1877, when the within depositions were

taken, I, John N. Oliver, an examiner in chancery, did cause to be personally present at the office of P. B. Stillson, esq., No. 462 Louisiana avenue, N. W., in the city of Washington, in said District, the witnesses whose depositions are herewith returned, to testify on the part and behalf of the defendants, in a certain cause now depending in the supreme court of the District of Columbia, wherein George A. Armes is complainant and Otis Bigelow et al. are defendants.

84 GEORGE A. ARMES } Equity.
vs.
BIGELOW ET AL. }

MAY 18TH, 1877.

Met pursuant to notice, to take depositions on the part and behalf of the defendant; present, P. B. Stillson, esq., solicitor for the defendant, and Charles H. Armes, solicitor for the plaintiff; whereupon,

OTIS BIGELOW, the defendant, a witness of lawful age, produced, sworn, and examined, deposed as follows:

I know the plaintiff.

Int. 1. Look at the paper I now hand you, written in pencil, and dated November 22nd, 1876, marked Exhibit O. B. No. 1, and state if that is the memorandum referred to in the pleadings and proceedings in this case.

Exhibit O. B. No. 1.

NOV. 22, '76.

I propose to give my house, on 8th st., subject to $2,000, for one house on Del. ave. & one farm in Fairfax Co., Va.

85 A. It is.

Int. 2. Was it ever intended by you, or made and delivered as a contract between the parties in this case?

(Objected to by Mr. Armes, on the ground that, if it is a complete writing, its purport will appear in the writing, and it is incompetent for him to state anything contrary to its effect.)

A. It was not.

Int. 3. Was Charles H. Armes present when it was drawn?

A. No.

Int. 4. What was done with it after it was drawn?

A. It was laid on the counter, and then thrown in the waste basket, but afterwards taken out of the waste basket and put in the drawer.

Int. 5. Why was it thrown in the waste basket?

A. I regarded it as worthless.

Int. 6. Was it torn before it was thrown in the waste basket?

A. It was.

Int. 7. Why did you take it out of the waste basket?

86 A. The plaintiff threatened me with a suit, and said it was a contract. I took it out to show it to the court.

Int. 8. About how long was it after it was thrown in the waste basket before you took it out?

A. It was within a week or two.

Int. 9. Were you able to find the other piece that was torn off?

A. No, sir.

(The Exhibit O. B. No. 1 is now offered in evidence by counsel for defendant; to which counsel for plaintiff objects, on the ground that it is a part only of an original paper.)

Int. 10. Look at the paper I now hand you, marked Exhibit O. B. No. 2, and state whether it was made by you with the original as presented before you.

A. It was.

Int. 11. State whether it is a copy of the whole of the original to the best of your recollection.

A. It is a true copy of the original as given to me by Mr. Armes.

Exhibit O. B. No. 2.

Nov. 22, '76.

I propose to give my house on 8th st., subject to $2,000, for one
87 house on Del. ave. & one farm in Fairfax Co., Va.; said house to be put in good cond., repairs & condition, or $1,500 cash.

GEORGE A. ARMES.
OTIS BIGELOW.

(Exhibit O. B. No. 2 here offered in evidence by counsel for defendant; to which counsel for plaintiff objects, on the ground that it is not a copy made by any one with the original before him.)

Int. 12. State whether at the time that paper was made, on the 22nd of November, 1876, you had seen the house on 8th street, referred to in the pleadings.

A. I had not.

Int. 13. State whether or not the conversation that was had between you and the plaintiff at that time was anything more than negotiation with a view to a trade.

(Objected to as leading, and as suggesting to the witness the answer desired.)

A. It was not.

Int. 14. State whether or not any trade was made between the plaintiff and you, on that day or at any other time, for the property mentioned in the proceedings.

88 A. There was no trade made.

Int. 15. State whether the plaintiff appealed to you to loan him some money about that time; and, if so, how much?

A. He did, and solicited several sums.

Int. 16. Did you loan him or advance him any; and, if so, how much?

A. I loaned him $500, all together.

Int. 17. What security did you take, if any, for the loan?

A. The plaintiff gave me a deed.

(So much of the answer as given is objected to by Mr. Armes, on the ground that it is incompetent for witness to state anything to show the purpose for which the deed was given; that tends change the effect of the deed as it is expressed on its face. He also objects to any testimony to show that the deed referred to, or any deed, was not such as it on its face purports to be.)

Int. 18. What property did that deed cover?

A. The 8th st. property.

Int. 19. For what purpose did you take it?

A. To secure myself for the $500, and no other.

89 (Answer objected to as not competent to show a trust in real estate, in addition to the objections noted above.)

Int. 20. Have you been and are you now ready to reconvey the 8th st. property on being paid the $500 and interest?

A. I am and have been.

Int. 21. For what purpose did you let the plaintiff, Mr. Armes, take the key of the Delaware avenue house?

A. For the purpose of repairing it.

Int. 22. Did you ever give him possession of it as owner?

A. I did not.

Int. 23. State why you employed him to repair it.

A. He said he had a man who owed him some money who would do the plastering, and I could then settle with him, the plaintiff. He asked it as a favor.

Int. 24. Does the plaintiff, Armes, also rent houses? Is that a part of his business as agent?

A. It is. That is, he has so stated to me, and I have known him to do it for others. I take it on information.

Int. 25. Did you authorize him to rent this house for you?

90 I did.

Int. 26. Are you still in possession of this Delaware avenue house?

A. I am, and have been, in possession of it since I have owned it.

Int. 27. State why you paid the interest on the $2,000 note secured by deed of trust on the 8th st. house, and also, why you paid the insurance on it?

A. Because the rents of the house were turned over to me for that purpose, and also to get a further extension of time for the benefit of the plaintiff, and also to protect my security.

Int. 28. State whether it is true that you are insolvent, and that a judgment of $16 cannot be made out of you, as sworn to by the plaintiff in his bill.

(Objected to on the ground that the plaintiff has sworn to no such thing in his bill, as the bill will show)

A. It is not true. I am perfectly solvent.

Int. 29. Did you tell the plaintiff that you were insolvent, and that a judgment of $16 could not be made against you?

A. I did not.

Cross-examination by Mr. ARMES:

91 Int. 30. The conversation in reference to this transaction between you and the plaintiff took place at your office, did it not?

A. One conversation did.

Int. 31. Question repeated. (Mr. Stillson says to witness, "He wants you to go on and state where the others, if there were others, took place.")

WITNESS. The conversation in relation to the loan took place in my office, if that is what you refer to.

Int. 32. I refer to the conversation out of which this transaction of the 22nd of November, 1876, arose. Did not that take place in your office?

A. All the conversation relating to the soliciting and the making of the loan took place at my counter.

Int. 33. Did not the conversation which led to the conveyance of the 8th st. house to you take place at your office?

A. I have answered as above.

Int. 34. Do you decline making any further answer?

A. I do not.

Int. 35. Then please state whether the conversation leading to

92 the conveyance of this property did not take place at your office?

A. It did.

Int. 36. Was not I (Charles H. Armes) present at your office on the

22nd of November, 1876, when the conversation was had between you and the plaintiff in reference to the exchange of this 8th st. house for your house on Delaware avenue, and the farm in Virginia?

A. Charles H. Armes was present at a conversation, but I cannot swear positively as to the day. He was present at a conversation in regard to a negotiation for an exchange of real estate.

Int. 37. Of this real estate?

A. Make your question more specific.

Int. 38. The real estate referred to in these proceedings?

A. Yes.

Int. 39. Was I (Charles H. Armes) not present at your office during the conversation on this subject between you and the plaintiff on the day you signed that writing?

A. I think you were present in the morning of that day, but not
93 present when the writing was drawn, unless hidden from view. The is a definite article. You were not present at the conversation in relation to the loan, and when the writing was signed.

Int. 40. Do you mean to swear, Mr. Bigelow, that I (Charles H. Armes) was not present, and did not see you sign the paper of which your Exhibit O. B. No. 1 is a part?

A. I am not aware that you were present.

Int. 41. Do you mean to swear that I was not?

A. I did not see you there.

Int. 42. Did you not hesitate before signing that paper?

A. Yes.

Int. 43. Did you not, before signing it, take it from your back office, in my presence, and go behind your counter, and show it to some one there?

A. No; I did not.

Int. 44. Did you not, after signing it, hand the paper to me?

A. Not at that time—not on the day it was signed.

Int. 45. Did you never hand that paper to me before you tore the signature off of it?

A. I think not.

94 Int. 46. Did you throw all of the pieces of that paper into the waste basket at the same time?

A. I think I threw the signatures on the floor.

Int. 47. Did you not, on the 22nd of November, 1876, read over that paper in my presence?

A. I did not.

Int. 48. After throwing that piece that you have offered in evidence into the waste-basket, did you not see any portion of the remainder?

A. I did not.

Int. 49. You have said you never gave the plaintiff, as owner, possession of this Delaware avenue house. In what capacity, then, did you give him the possession?

A. As agent, or rather as a favor, for the purpose of repairing it, as before stated.

Int. 50. Why, then, have you spoken of it as his property?

(Objected to as assuming a fact not proved, there being no proof that he has spoken of it as his property.)

A. I do not know that I ever have spoken of it as such.

95 Int. 51. Do you mean to say you have not?

A. I do not remember any such occasion.

Int. 52. You have regarded it as his property, have you not?

A. No, sir.

Int. 53. Do you say on oath that you have never, in any way, informed any person that the plaintiff in this case, Mr. George A. Armes, was the owner of this Delaware avenue property referred to in these proceedings?

A. I do not remember of ever telling any one so.

Int. 54. Do you swear you never did so inform any one?

A. I do not remember of ever so informing any one.

Int. 55. Do you state that you never did?

A. I do not think I ever did.

Int. 56. You have stated that you employed the plaintiff to rent the Delaware avenue house for you; have you so expressly employed him since the 22nd of November, 1876?

A. I think it was before that time I told him to put in a tenant, if he could find one.

Int. 57. Question repeated.

96 A. No; not that I remember.

Int. 58. You delivered to him the key since that date, did you not?

A. I think I did.

Int. 59. How much was you to allow him for repairing the house?

A. I told him I would be willing to give $25.

Int. 60. How were you to pay him that $25, according to the agreement?

A. There was nothing said about it at the time he offered to repair it.

Int. 61. Was it not agreed that that $25 should go in as a part of the consideration in this negotiation?

A. The negotiation for exchange, yes.

Int. 62. How did you get the key after that?

A. I got it from the parties living next door.

Int. 63. When did you get it?

A. I got it about the middle of April, to put a tenant in. I had no use for it before.

Int. 64. Was there a tenant in the house on the 22nd of November, 1876?

A. I think not.

Int. 65. How long before that date did your tenant move out?

97 A. I do not remember.

Int. 66. When the plaintiff got from you the $500, did he give you any note for the money or other memorandum?

A. He did not.

Int. 67. Did he state when he would repay it?

A. He said as soon as he got in funds.

Int. 68. Was there any express agreement that he would ever repay it?

A. No.

Int. 69. Have you ever executed the deeds to the Delaware avenue property, and this farm referred to, which you instructed your clerk to make out to the plaintiff?

(Objected to on the ground that it is not proved that the witness ever instructed his clerk to make out the deeds, and as assuming a fact not proved.)

A. No.

Int. 70. Have you not offered to pay the plaintiff $20, as the balance of money coming to him in this negotiation, if he would also take the

Delaware avenue property without this farm, or the farm with-
98 out the Delaware avenue property?

(Defendant's counsel states that the defendant is willing to make such exchange, on condition that the plaintiff will discontinue his suit and pay the costs, and that no trade has ever been consum'ated—the negotiation between the parties being still pending—no agreement having ever been closed between the parties.)

A. Leaving out the word "also," I have.

Int. 71. Was not the $500 which you paid to plaintiff intended to go as part of the consideration in the negotiation for this farm in Virginia, the Delaware-avenue house, and the 8th-st. house?

(Objected to on the ground that the $500 was not paid but loaned, and that no negotiations were ever closed and the intentions of the parties depended upon what might take place in the future.)

A. The money delivered was considered on my part an accommodation loan.

Int. 72. But if the conveyances were made referred to on your own. part in that negotiation, this money was intended as a part of the consideration, was it not?

99 (Objected to because no conveyances have been referred to on the part of witness, and what was intended depended upon what might take place in the future, and the negotiations are still open and undetermined.)

A. No, sir.

Int. 73. If the trade which you had reference to had been completed, as you understood it, was not this $500 to have gone as part of the consideration?

(Objected to on the ground that no trade was made to be completed, and therefore no application could be made in that way.)

A. This $500 was lent the plaintiff upon his urgent request to meet pressing necessities, and had nothing to do with any trade whatever.

Int. 74. Do you mean that it had no connection with or reference to any trade then completed, or that it had no reference to or connection with any negotiation either complete or incomplete?

A. There was no trade completed. To my mind the talk of trade simply developed the fact that he wanted the money.

Int. 75. It had reference then, and connection with, the nego-
100 tiation which you regarded as then pending and incomplete, had it?

(Objected to as indefinite; as not showing what the word "it" referred to, and being statement of counsel and not a question.)

A. Only so far as to bring us into communication on the money question.

Int. 76. If the negotiation which you regarded as pending and incomplete, at the time he got this money, had been completed, was not this $500 to go as a part of it?

A. Not necessarily.

Int. 77. There was a sum of money mentioned in that negotiation, was there not?

A. What negotiation?

Int. 78. The negotiation which you regarded as then pending and incomplete, and above referred to.

A. There were several sums suggested.

Int. 79. If that negotiation had been completed according to your view of it, were you not to let the plaintiff have $500 and $25 additional for repairs?

A. I think there was some such proposal made.

Int. 80. Was not that the fact, if it had been completed?

101 A. I offered to make the plaintiff a fair trade, and if that had been completed I do not know what might have taken place. The idea was to make a fair trade.

Int. 81. You were, were you not, to pay the $500 if that trade had been completed?

(Objected to on the ground that that depended upon the terms of the trade when completed, if it ever should be completed.)

A. I positively refused to make any such agreement at the time.

Int. 82. Do you mean by that that you refused to make any such negotiation as that which you "regarded as pending"? for that was the question.

A. I do not understand the question.

Mr. ARMES. I mean to ask the witness whether in the negotiation between himself and the plaintiff which we have several times referred to, and which he has referred to as incomplete and pending, at the time the plaintiff got the $500, he was not to give the plaintiff $500 if the negotiation should be completed?

(Objected to on the ground that that depended upon the agreement between the parties when the negotiation was completed, and the

102 loan of the $500 at that time had nothing to do with it.)

A. No such negotiation was accepted by the defendant.

Int. 83. But the $500 was to have been paid by you if the plaintiff had accepted the negotiation?

(Objected to upon the ground that it depended upon what terms the negotiations were closed; and that the loan of $500 had nothing to do with it.)

A. There was such a proposal, but it was not accepted.

Int. 84. Did you not state to the plaintiff that you would give to him the deeds from yourself and wife for this property on Delaware avenue, and in Virginia, after your wife returned?

(Objected to on the ground that the contract, if any, was in writing, and is the best evidence, and parol evidence is inadmissible.)

A. I did, in case we could make a fair trade.

Int. 85. Was it qualified in that way expressly at the time the plaintiff gave you his deed?

A. I do not remember of talking about trade at that time, but

103 I have expressly qualified it repeatedly in that way.

Int. 86. Did you not say to the plaintiff on or after the 22nd of November, 1876, or on the day he delivered the deed to you for the 8th-st. house, that you were expecting your wife shortly to return from Europe, and that when she arrived you would give the plaintiff said deeds, or words to that effect?

A. I do not remember about agreeing to give any deeds.

Int. 87. Was your wife in this country when the plaintiff delivered his deed of the 8th-st. property to you?

A. She was not.

Int. 88. How long after that was it before she returned?

A. She returned about the 1st of January.

Redirect by Mr. STILLSON:

Int. 89. You have stated in your cross-examination that there was no express agreement that the plaintiff was ever to pay the $500 loaned by you to him; do you mean by that that there was no time fixed for the payment, and that only?

104 (Objected to as suggesting the answer desired.
Question withdrawn.)

Int. 90. What do you mean by stating in your cross-examination that there was no express agreement that the plaintiff was ever to pay you the $500 loaned?

A. First, the question was such that I could answer in no other than negatively. What I mean to say is that the demand was urgent, and there was nothing said about the time of payment.

Int. 91. On your cross-examination you stated that you had offered to give him for the 8th-st. property either the Virginia farm or the Delaware-avenue house and $20 in money, in exchange. Has he ever accepted that offer so made him?

A. He has not.

Int. 92. On your cross-examination you were asked "if the negotiations had been completed according to your view, you were to let plaintiff have $500, and $25 for repairs"; please state whether or not, on the 22nd of November, 1876, you had any views on the subject, or sufficient knowledge of the value and condition of the 8th-st. property to
105 form an opinion or conclusion in relation to the trade.

A. I had not.

Recross-examination by Mr. ARMES:

Int. 93. Directly with reference to that last question and answer, I ask you, did you not, a few days before the 22d of November, 1876, go with the plaintiff to the Delaware-avenue house and talk with him then and there about that house with reference to an exchange for this 8th-st. house?

A. I went with him to the Delaware-avenue house, and we talked about an exchange for a house which he said was on 8th st.

Int. 94. Did you not on that occasion make him an offer for the 8th-st. house?

A. I did not.

Int. 95. Had you never, up to that time, seen the 8th-st. house?

A. Not with a view to exchange.

OTIS BIGELOW.

Subscribed and sworn to before me this 18th day of May, 1877.

106 JOHN N. OLIVER,
Examiner in Chancery.

GEORGE C. B. ROWAN, a witness of lawful age produced, sworn, and examined on the part and behalf of defendant, deposed as follows:

I reside in Washington, D. C.; I am a bookkeeper in the banking-house of Bigelow & Benjamin; I think I went there in May, 1876 or 1875; I know George A. Armes, the plaintiff in this suit.

Int. 1. Where you in the bank at the time he made a pencil memorandum marked Exhibit O. B. No. 1 (now handed to you), and do you know who was present at the time?

A. Yes.

Int. 2. Who was present?

A. Myself, Mr. Bigelow, Mr. George A. Armes, and I am not certain whether Mr. Truesdale was in his part of the office or not; it is separate from ours. Gen'l Benjamin, who is now dead, may have been there; I think he was.

Int. 3. Do you know Charles H. Armes?

107 A. Yes.

Int. 4. Was he present at the time?

A. No.

Int. 5. State the circumstances in relation to George A. Armes, the plaintiff, taking the paper on which the memorandum was made and writing it, according to the best of your recollection.

A. I think he took the paper from a box which is on the counter of the paying teller's desk; I was writing at the time at my own desk, which is a few feet from it; and after his writing it and signing it, I think he handed it Mr. Bigelow.

Int. 6. During that time let me ask again whether Charles H. Armes was present in the bank at all?

A. I do not remember seeing him in the bank at all that day.

Int. 7. Do you remember distinctly that he was not in the bank at all at that particular time?

A. I do.

Cross-examination by Mr. ARMES:

Int. 8. When did you first see the paper handed to you by Mr.
108 Stettson, marked Exhibit O. B. No. 1?

A. I first saw it the day Mr. George A. Armes wrote it, although I did not read it at that time.

Int. 9. Who showed it to you?

A. I saw it as Mr. Armes handed it to Mr. Bigelow—as it passed from Mr. Armes' hands; I afterwards saw it in the hands of Mr. Bigelow while he was reading it.

Int. 10. Did you see the signatures to it?

A. I did. I did not notice the signatures particularly.

Int. 11. Have you ever had any conversations with Mr. Bigelow with reference to this paper?

A. No, sir.

Int. 12. Have you ever had any conversation with Mr. Bigelow as to ho was present when this paper was shown?

A. He asked me if I knew, and I told him I did.

Int. 13. Did he tell you what his recollection was as to who was present?

A. No.

Int. 14. Have you talked with any one else besides Mr. Bigelow as to who was present on that occasion?

109 A. I think Mr. Stittson asked me this morning who was present.

Int. 15. Any one else?

A. No.

Int. 16. Have you not spoken to any one besides Mr. Stittson and Mr. Bigelow as to who was present on that occasion?

A. No.

Int. 17. Who came into the bank while this negotiation was being carried on?

A. I do not remember. It was nearly 3 o'clock, and probably a good many came in and went out, closing up the affairs of the evening.

Int. 18. Do you remember whether any one came during this negotiation?

A. I do not know anything about the negotiation further than the drawing of the paper and signing; consequently cannot say. I do not know how long it had been going on.

Int. 19. What did the plaintiff first say to Bigelow when he went into Bigelow's office about this matter?

A. I remember nothing about it.

Int. 20. How many interviews occurred between these parties on that day?

A. I do not know.

110 Int. 21. Do you know the hour of the day when the plaintiff first commenced this negotiation with Mr. Bigelow?

A. I do not.

Int. 22. Did you see him when he came in?

A. I do not remember. There are a great many people coming in and going out of the bank every day, and it is impossible for me to remember when they come in or go out unless they have business with me. He may have been in 50 times.

Int. 23. Did you see him when he went out on the occasion of making said paper?

A. I do not remember when he went out. I was busy making up the accounts of the day and locking up the safe, and paid no attention to it whatever.

Int. 24. How many rooms were there which constituted the bank and office of Bigelow & Benjamin e at that time?

A. Two (2).

Int. 25. The bank is carried on in the front room next to the street, and the office is in the rear of that, is it not?

A. I should not consider that an office. It is a room used for private purposes.

111 Int. 26. You do not mean, do you, by "private purposes," that the back room is partitioned off from the front, so as to prevent voices being heard from one to the other?

A. I do.

Int. 27. Was any portion of this negotiation carried on in the back room, or don't you know?

A. I do not know.

Int. 28. When the plaintiff came into the bank the day of the making of this paper, Exhibit O. B. No. 1, did he go into the back room?

A. I do not know.

Int. 29. What was the date of this transaction when you remember so well who was and who was not present?

A. I do not remember. I paid no attention to it at the time, not supposing it necessary.

Int. 30. Do you not remember seeing Mr. Bigelow, the defendant in this case, and myself (C. H. Armes) at one time in Mr. Bigelow's bank together?

A. I have seen Mr. C. H. Armes and Mr. Bigelow talking several times.

112 Int. 31. Question repeated.

A. Yes; I have seen you there together.

Int. 32. Have you ever seen us in the back room together?

A. I do not remember.

Int. 33. Do you not sometimes go out on errands for Mr. Bigelow?

A. I do.

Int. 34. Do you not remember that when, one day in November last, Mr. Bigelow, the defend't, and myself (C. H. Armes) were in the back room in conversation, you came into the room and got your hat and went out of the bank?

A. I do not remember seeing them when I went in to get my hat. My hat and coat were both in the back room, and when I go in to get my hat or coat, I pay no attention to who is there unless spoken to by one of them.

Int. After mentioning this circumstance, can you not now remember having once seen the persons last above named together in that room?

A. I do not remember having seen them there.

Int. 35. Did you know when Mr. Bigelow tore the names off this paper, Exhibit O. B. No. 1?

113 A. I did not, and do not now.

Int. 36. Did you first see this paper (Exhibit O. B. No. 1) when it was in Mr. Bigelow's hands behind the teller's counter?

A. I saw it in Mr. Bigelow's hands when Mr. Armes handed it to him.

Int. 37. Did you see Mr. Armes write it?

A. I did.

Int. 38. Did Mr. Bigelow sign this immediately upon plaintiff's handing it to him?

A. I do not know.

Int. 39. Did he hand it back to the plaintiff before he signed it?

A. I do not know.

Int. 40. What did you do with the deeds of the Delaware avenue house and the farm in Virginia, which you had prepared for the signatures of Mr. & Mrs. Bigelow?

A. I do not remember preparing any *any* deeds.

GEORGE C. B. ROWAN.

Sworn to and subscribed before me this 18th day of May, 1877.

JOHN N. OLIVER,
Examiner in Chancery.

114 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John N. Oliver, examiner in chancery, do hereby certify that in pursuance of notice the foregoing depositions taken down, and by me reduced to writing, in the presence of and from the statements of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of the solicitors for the parties who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

JOHN N. OLIVER,
Examiner in Chancery.

115 *Decree dismissing bill.—Filed July 16th, 1877.*

In the supreme court of the District of Columbia, the 16th day of July, A. D. 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW ET AL. } In equity. No. 5359.

This cause coming on to be heard, on the bill, answer, & testimony, and being argued by counsel for the respective parties, it is on consideration thereof hereby ordered, adjudged, and decreed that the bill be dismissed without costs.

By the court.

116 *Affidavit of John Cajay, as exhibit to petition by plaintiff for leave to file a bill of review.—Filed July 31st, 1877.*

Petition for bill of review.

THE DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Before me, M. M. Rohrer, a notary public within and for said county, personally appeared John Cajay, of lawful age, who, having been by me first duly sworn, deposes and says, upon his oath, that he is a resident of the District of Columbia, that he occupied with his family a house numbered eleven hundred and thirty eight, Delaware avenue, northeast, in the city of Washington, for more than two years prior to November, A. D. 1876, and left the said house and removed therefrom, as near as he can now recollect, about the 23rd day of November, 1876. Affiant moved into said house under a contract to purchase the same from Otis Bigelow, dated April 1st, 1874, and gave notes of that date for the purchase, payable to one J. H. Lewis. During affiant's occupancy of the house he paid some of said notes, amounting to over three hundred dollars, to said Otis Bigelow, who returned them to affiant
117 when paid. Before 23rd Nov., 1876, affiant failed to pay some of the notes as they fell due, and was notified to leave said house repeatedly, by Mr. Meriman, agent for Otis Bigelow. Before leaving affiant had paid three or four months' rent to said Merriman, to prevent being ejected from the premises.

About two weeks or more after affiant removed from said house, Mr. Geo. A. Armes came to see him, and asked him to pay up the back rent for said house, and affiant told Mr. Armes he did not owe any back rent. Affiant then wrote a note to Mr. Bigelow, and sent it by a boy, to ask an explanation why any back rent was demanded, and not getting an answer, called to see Bigelow himself, and in the conversation Bigelow claimed that affiant owed back rent, but told him he could now settle it with Mr. Armes (meaning Geo. A. Armes), as he, Bigelow, had sold or traded the house to Mr Armes, and the back rent was to be paid
118 to said Armes. Said Bigelow did not then say how much back rent was unpaid. Affiant has never admitted said claim, or paid any of it.

JOHN CAJAY.

Subscribed and sworn to before me this 20th day of July, 1877.
M. M. ROHRER,
Notary Public.

Petition for bill of review.—Filed July 31, 1877.

In the supreme court of the District of Columbia, this day of July, 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW AND MARY R. BIGELOW. } Equity. No. 5359.

To the supreme court of the District of Columbia, holding a special term in equity for said district:

The petition of the plaintiff in the above-entitled cause respectfully shows as follows:

First. That he has heretofore exhibited his bill in this honorable

119 court against the above-named defendants for the purpose of compelling them to convey to your petitioner a certain farm in Fairfax Co., Va., and a certain house on Delaware avenue, in this city, therein fully described, and pay $20 in cash as the balance of consideration for a certain house and lot on 8th street northwest, in this city, which your petitioner had conveyed to defendant Otis Bigelow, in pursuance of an agreement made by and between the parties, and alleging that a memorandum in writing, showing the terms of said agreement, except as to the minute description of said property, was duly made and signed by the contracting parties (but which was subsequently torn up by said defendant), and that for a full and particular description of said property certain old title deeds were delivered in the course and as a part of the negotiation. That said agreement had been fully performed on the part of the plaintiff by delivering to said defendant a deed in fee duly executed by the plaintiff and wife, conveying said house on 8th street to said defendant, which deed said defendant
120 caused to be recorded; alleging further that said agreement had been partly performed on the part of the defendants by giving the plaintiff the key and possession of said house on Delaware avenue, and by further paying the plaintiff $505 in money as a part of the consideration so agreed upon for the plaintiff's said house on 8th street; and praying in said bill that said defendants be required to specifically perform the whole of said agreement.

The defendants, being duly served with process, appeared and answered said bill, the defendant Otis Bigelow admitting that the memorandum made was signed by him; that he subsequently tore up the same; that said old title-deeds were delivered to the plaintiff during the negotiation, as descriptive of the said farm in Va., and the said house on Delaware avenue; that said deed in fee of the house of the plaintiff was delivered by the plaintiff to him and that he had caused the same to be recorded, and that he had directed his clerk to prepare
121 deeds of conveyance of said farm in Va. and said house on Delaware avenue, to the plaintiff; but claimed that the negotiation was never completed, and that the money paid to the plaintiff as aforesaid was loaned by the defendant to him. But the said cause being at issue, testimony was taken, and a hearing was had before your honor at the present term of this court, whereupon a decree was made on the 16 of July, 1877, dismissing said bill without costs, which said decree is now of record in this court.

Second. And your petitioner further showeth that since the time of making and entering said decree, he has discovered new matters important and material in said cause, viz., that the defendant, Otis Bigelow, since said negotiation, and since the conveyance of said 8th street house and the delivery of the $505 as aforesaid, has expressly admitted that a trade or sale of said property had been made to your petitioner, as will fully appear by reference to a certain affidavit herewith filed, which new matter your petitioner did not know, and could not by
122 reasonable diligence have known so as to make use thereof in said cause before and at the time of making and entering the said decree; that since the commencement of said cause and before the testimony was closed, your petitioner made diligent search and inquiry for the affiant, John Cajay, at the Interior Department, where said Cajay had been employed for years prior to Jan'y, 1877, and at such other places as it seemed probable he could be found, and until the 18th of July, 1877, was unable to get any information as to his whereabouts. On said 18th of July, your petitioner, being at a blacksmith's shop on G

street, near 9th, in this city, for the purpose of having his horse shod, inquired of the blacksmith whether he knew one John Cajay, formerly of the Interior Department, and it so happened that he did know said Cajay; and he so directed your petitioner that he found him on the following day in South Washington.

Your petitioner further represents that on the first day of July, instant, there became due an instalment of interest on the $2,000
123 incumbrance on said house on 8th street (which said incumbrance was assumed by said Otis Bigelow, as will fully appear by said deed in fee as the same is recorded), and he is informed and believes that demand for the payment of the same has been duly made of said defendant, who has refused payment and is still in default; and he also states upon information and belief that the trustee is about to proceed to sell said property to make the amount of said incumbrance; and it is quite probable that the said deed in fee which said defendant caused to be recorded, and which he now claims to hold as a second trust, will operate to prevent persons, except said defendant and said owner of the incumbrance, from bidding at such sale.

Your petitioner believes that from said newly discovered matters in connection with other facts now established in said cause, it will appear to your honor that a contract was made and concluded, and that all its terms will appear by clear, definite, and conclusive proof; that the plaintiff performed the contract on his part fully and in good
124 faith, giving the said defendant an absolute deed of conveyance, and that the defendant accepted the same as absolutely as it is possible for an acceptance to be manifested, taking and recording the deed, leaving nothing whatever to be done by the plaintiff; that it will be impossible for the plaintiff to recover at law the house so conveyed; that the rescission of said contract by said defendant is a fraud on the plaintiff, and cannot be fully compensated by recovery of damages in a court of law; that the defendant delivered to the plaintiff possession of the Delaware avenue house, in pursuance of the contract, the plaintiff entering thereon and holding possession with the acquiescence of the defendants for months; that all the parties understood that said contract was complete, was made, such understanding being manifested by said defendant by giving instructions to his clerk to prepare the deeds; by admitting verbally and in writing that the Delaware avenue property was no longer his, but the plaintiff's; by giving the plaintiff nearly the whole of the money part of the consideration si-
125 multaneously with receiving his deed, taking no note for the same nor showing a single fact or circumstance concurring or consistent with his statement that said money "was considered by him an accommodation loan," taking possession and control of the house conveyed to him, having it insured, and assuming the incumbrance as his own debt, paying the interest due thereon Jan'y 1st, 1877, and agreeing with the holder of the incumbrance upon a time when he would pay off the whole incumbrance; and your petitioner manifesting his understanding that said contract was complete, by conveying what he agreed to convey, and by receiving from the defendant by far the greater part of the consideration into his own actual possession.

That as further evidence that said contract was considered complete and the trade made, it will appear that a memorandum thereof was signed by both parties; that the subsequent tearing and destruction by the said defendant of a portion of said memorandum for which
126 no explanation or excuse has been offered is a fraud on the plaintiff. That the contents of that portion which was so destroyed has

been clearly, definitely, and conclusively proven. That all the real property now claimed by your petitioner is named in that portion of said memorandum which has been preserved, and that said memorandum as originally signed, together with other writings used as a part of the negotiation, contained a complete contract answering the requirements of the statute of frauds.

Your petitioner therefore prays that he may have leave to file a bill of review against the said Otis Bigelow and Mary R. Bigelow for the purpose of obtaining a review and reversal of the said decree, and that all further proceedings under the same may be stayed.

GEO. A. ARMES.

C. H. ARMES,
Of Counsel for Petitioner.

George A. Armes, being duly sworn, deposes and says he has read the above petition subscribed by him and that he knows the contents
127 thereof. That the statements therein made upon his personal knowledge he knows to be true, and those made upon information and belief he believes to be true.

GEO. A. ARMES.

Sworn to before me July 23rd, 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

128 *Notice of motion for leave to file bill review.*

In the supreme court of the District of Columbia the day of , 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW & MARY R. BIGELOW. } In equity. No. 5359.

Take notice that the petition of the plaintiff filed on the 31st of July, 1877, for leave to file a bill of review in this cause, will by direction of the court be heard on Monday next, August 6th, 1877, as a motion for a rehearing.

C. H. ARMES,
Of Counsel for Plaintiff.

To P. B. STILLSON, Esq.,
Sol. for Defendants.

Service admitted this 2d day of August, 1877.

P. B. STILSON,
Def'ts' Att'y.

129 *Decree for rehearing.—Filed Aug. 7th, 1877.*

In the supreme court of the District of Columbia the 7th day of August, A. D. 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW AND MARY R. BIGELOW. } In equity. No. 5359.

The petition of the plaintiff in this cause, filed in this court on the 31st

day of July, 1877, having been adjourned for hearing until this day, and now coming on to be heard as a motion for a rehearing of this cause, and counsel for the respective parties being heard, upon consideration thereof it is, this seventh day of August, A. D. 1877, ordered and adjudged that a rehearing be allowed; that the decree heretofore passed be set aside, and that ten days be allowed the plaintiff to take testimony of John Cajay as to the newly discovered matter set forth in the affidavit filed with said petition; that a further period of ten days be allowed said defendant to take testimony in answer to said testimony to be taken on the part of complainant, and a further period of five days to
130 complainant to take other evidence in rebuttal, and that Mr. Larner an examiner of this court, be appointed to take said testimony.

By the court.

131 *Complainant's deposition.—Filed Aug.* 16, 1877.

In the supreme court of the District of Columbia.

ARMES *vs.* BIGELOW ET AL. } In equity. No. 5359. Doc. 16, ss.

Complainant's depositions.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses begun and held on the 8th day of August, A. D. 1877, and when the within depositions were taken, I, Philip F. Larner, an examiner in chancery, did cause to be personally present at my office, No. 639 F street northwest, in the city of Washington, in said District, the within named John Cajay, to testify on the part and behalf of the complainant in the above-entitled cause.

And I do hereby certify that in pursuance of an order passed
132 by the hon. justice holding equity court the annexed depositions were taken down, and by me reduced to writing, in the presence of and from the statements of the several witnesses at the time and place herein designated, and were then and there by me read over to the witnesses, and by them subscribed in my presence and in the presence of the counsel who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause or in any manner interested therein.

PHILIP F. LARNER,
Examiner in Chancery.

WASHINGTON, D. C., *August* 14, '77.

133 *Notice of taking testimony.*

In the supreme court of the District of Columbia the 7th day of August, 1877.

GEORGE A. ARMES *vs.* OTIS BIGELOW AND MARY R. BIGELOW. } In equity. No. 5359.

Take notice that the plaintiff in this cause will proceed under the or-

der of the equity court, bearing date this day, to take testimony at the office of Larner, esq., an examiner of said court, at 1 o'clock tomorrow, the 8th instant.

C. H. ARMES,
Of Counsel for Plaintiff.

To P. B. STILLSON, Esq.,
Sol. for Defendant.

Service accepted the 7 Aug., 1877.

P. B. STILSON,
Def't Att'y.

134 In the supreme court of the District of Columbia.

ARMES *vs.* BIGELOW. } Equity 5359. Doc. 16.

COMPLAINANTS' DEPOSITIONS.

AUGUST 8, '77.

Met pursuant to annexed notice at office of examiner, No. 639 F street, Washington, D. C., at 1 o'clock p. m. Present, Mr. C. H. Armes, representing complainant, and Mr. P. B. Stillson, for defendant.

Deposition of John Cajay.

JOHN CAJAY, a witness of lawful age, residing in Washington, having been duly sworn, doth depose and say in answer to interroga-
135 tories propounded by Mr. Armes:

I reside at 804 E street, southwest, in this city, and have resided there a month and twenty-three days. I moved to this place from 304 F street, southwest. On the 23rd of November, 1876, I removed from No. 1138 Delaware avenue, northeast. I could not say exactly the number of lot and square on which 1138 Delaware avenue is located, but I have a paper which gives such number; I think it is square 712.

Q. Refer to the paper named, and tell the number of square and lot.

(Objected to by Mr. Stillson as not being within the scope of the order reopening the case, and further objects to the witness referring to a paper.)

The witness here refers to the paper mentioned, and says—

A. Lot 14, square 712.

Q. State what that paper is.

(Objected to by Mr. Stillson.)

136 A. This paper was given to me at the time I undertook to buy the property, and as a guarantee of what property I was buying, and also giving me a minute description of the property.

Q. What is the date of it?

(Objected to on same grounds as before, and as proving contents of paper by parol.)

Ans. April 1st, 1874.

Q. Do you know the plaintiff, Geo. A. Armes?

A. I saw him once after I moved out of the house.

Q. Do you know Otis Bigelow?

A. Yes, sir; I am acquainted with Mr. Bigelow.

Q. Did you ever have any conversation with Mr. Bigelow about this property, No. 1138 Delaware avenue, after you left it?

A. Yes, sir.

Q. State what that conversation was, and the circumstances which led to it.

A. The circumstances were that Mr. Armes, the plaintiff (objected to, counsel for defendant objects to conversations between Mr. Armes and witness not in the presence of defendant), came to me and asked
137 me about some back rent; I told him I did not owe any. He said nothing more.

(Defendant's counsel here moves to strike out the last answer, on the ground that it is improper evidence.)

Q. Do you know about when that was?

A. I could not say positively as to the time, but it was some time after I had moved away from the place.

Q. What occurred then?

A. I then wrote a note, and sent it by a boy to Mr. Bigelow's office, asking (contents of note objected to, as note itself is best evidence, and should be produced) him about the back rent.

Q. Did you get a reply?

A. No, sir. In the afternoon I called on Mr. Bigelow myself in person & asked him about it, and he told me that he had sold the house to Mr. Armes, and that the back rent he, Mr. Armes, was entitled to as a part of the transaction. I told him I did not owe any rent; that the last money I paid to Mr. Merriman. He said, "well, I'll see him."
138 That was all.

Q. What was the occasion of the dispute about rent, as you claim no rent was due?

(Objected to by Mr. Stillson as immaterial and inadmissible under the order, and also because no dispute has been proven.

Question withdrawn.)

Q. When the plaintiff called on you and demanded the back rent did he state who sent him?

(Objected to on same grounds as before.)

A. He told me that Mr. Bigelow told him to call on me for the back rent.

Q. State about how long this was after you moved out of the house.

A. I could not say as regards the time. I could not give the time definitely. It was sometime afterwards—perhaps a couple of months or so.

Cross-examined by Mr. STILLSON for defendant:

139 Q. At what place was this conversation with Mr. Bigelow to which you have referred?

A. At Mr. Bigelow's bank.

Q. Was any one present during that conversation?

A. The clerk was there. I don't know that he heard any of the conversation. He was a young man.

Q. Was any one else there at the time?

A. I don't know whether Mr. Truesdell was there or not. I don't know whether there was any one else there or not. I didn't pay much attention.

Q. Was your object in going there to see Mr. Bigelow in reference to the back rent only?

A. That was all.

Q. Your mind was on that and nothing else?

A. Yes.

Q. Anything else which took place was incidental to that and your mind was not fixed on it?

A. My mind was fixed on nothing else but the rent.

Q. You had no interest in anything but the rent?

140 A. That was all. I wanted to find out about the rent. I claimed that I did not owe anything.

Q. You had no interest in the ownership of the property one way or the other, had you?

A. No, sir. I had given it up entirely.

Q. It made no difference to you who owned it?

A. It made no difference to me, I had moved out.

Q. You did not charge your mind with anything except in relation to the rent?

A. Nothing else, one way or the other.

Q. Aside from what took place in relation to the rent you do not remember the exact language or words used?

A. When I asked Mr. Bigelow about the back rent and why I should pay it to Mr. Armes, he told me he had sold the house to Mr. Armes and that the back rent went as a part of the transaction. I told him I did not owe any; that I had paid the last money to Mr. Merriman. Said he, "I will see about it." I then bade him good afternoon and went away.

141 Q. You are a colored man, are you not?

A. Yes, sir.

Q. Have you seen the plaintiff, Mr. Armes, since he called on you for the rent, and if so, when?

A. I saw him once since, about two weeks ago.

Q. Where did you live last previous to living at 304 F street, southwest?

A. I moved from 1138 Delaware avenue to 304 F street, southwest, and from the latter to Mr. Johnson's house on 4½ street, and from there to 804 E street.

Redirect by Mr. ARMES:

Q. You have mentioned several houses you have resided in. Have you ever resided in any other house of Mr. Bigelow except 1138 Delaware avenue?

A. Not to my knowledge.

JOHN CAJAY.

Sworn to and subscribed before me this 8th day of August, A. D. 1877.

PHILIP F. LARNER,
Examiner in Chancery.

Adjourned at 2 o'clock p. m.

142 *Defendant's deposition.—Filed Aug. 16th, 1877.*

Defendant's testimony.

In the supreme court of the District of Columbia.

ARMES *vs.* BIGELOW ET AL. } *ss.* In equity. No. 5359, doc. 16.

Defendant's deposition.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered, that at an examination of witnesses, begun and held on the 15th day of August, A. D. 1877, when the within depositions were taken, I, Philip F. Larner, an examiner in chancery, did cause to be personally present at my office, No. 639 F street, northwest, in the city of Washington, in said district, the within named Otis Bigelow, to testify on the part and behalf of the defendants in the above entitled cause. And I do hereby certify that in pursuance of an order passed by the hon. justice holding equity court, the annexed depositions were taken down, and by me reduced to writing, in the presence of and from the statements of the several witnesses at the time and place herein designated, and were then and there by me read over to the witnesses, and by them subscribed in my presence and in the presence of
143 the counsel, who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause, or in any manner interested therein.

PHILIP F. LARNER,
Examiner in Chancery.

WASHINGTON, D. C., *August 16th*, '77.

144 *cause, or in any manner interested therein.*

Philip F. Larner,
Examiner in Chancery.

Washington, D. C., August 16, '77.

In the supreme court of Dist. of Col.

ARMES *vs.* BIGELOW ET AL. } Equity. No. 5359, doc. 16.

DEFENDANT'S DEPOSITION.

AUGUST 15TH, 1877.

Met by agreement of counsel at office of examiner, No. 639 F street, Washington, D. C., at 1 o'clock p. m. Present, Mr. Stillson, with defendant.

145 *Deposition of Otis Bigelow.*

OTIS BIGELOW, having been duly sworn, doth depose and say, in answer to interrogatories propounded by Mr. Stillson:

Q. Are you the defendant in this suit?

A. I am.

Q. Do you know the witness John Cajay?

A. I do.

(At this point Mr. Armes, solicitor for complainant, enters the room.)

Q. Do you recollect of John Cajay's calling at your bank in reference to back rent, as testified to by him?

A. I have an indistinct recollection; yes.

Q. What was the object and subject of that interview?

A. I claimed back rent of him, and he said he paid it to Merriman.

Q. Was there any other matter or subject discussed between you?

A. No; not to my recollection.

Q. Had either of you any interest in discussing the ownership of the property?

A. Had not.

146 Q. Had that back rent which was in controversy between you anything to do with the ownership?

A. No, it had not.

Q. He has stated that you told him that you had sold the property to Armes. Did you make any such statement to him?

A. I don't think I did.

Q. Have you any recollection as to any conversation with him, as to the ownership of the property?

A. I don't remember any such conversation. He merely came in and went out.

Q. Had the question, as to whether or not any rent was due, anything to do with the ownership of the property?

A. It had not.

Cross-examination by Mr. Armes waived.

Testimony closed by Mr. Stillson.

OTIS BIGELOW.

Sworn to and subscribed before me this 15th day of August, A. D. 1877.

PHILIP F. LARNER,
Examiner in Chancery.

Adjourned.

147 *Motion to strick out parol evidence.—Filed Nov. 28th*, 1877.

Supreme court Dist. of Columbia, this 22 day of Nov., A. D. 1877.

GEORGE A. ARMES
vs.
OTIS BIGELOW. } No. 5359.

The defendant by his counsel, P. B. Stillson, moves the court to strike out all the testimony introduced relating to or tending to prove a contract in this suit, resting on parol, on the ground that the pl'ff claims in his bill, and it appears from the record that a paper writing claimed to be a contract, has been proved and introduced in evidence for the rea-

son that a contract cannot rest partly in writing and partly in parol, and the writing is the best and only proper or competent evidence.

P. B. STILLSON,
Pl'ff Att'y.

148 *Motion to confine argument to new evidence.—Filed Nov.* 28, 1877.

Supreme court Dist. of Columbia, this 22nd day of November, 1877.

GEORGE A. ARMES
vs. } No. 5359.
OTIS BIGELOW.

The def't by his counsel, asks & claims that this suit be now heard upon the evidence which has been introduced since the former hearing and decree. On the ground & for the reason that the suit having been heard and decided, & a decree duly entered therein, dismissing Pl'ff's bill, is final unless necessarily changed by the newly discovered evidence of Cajay, for which purpose alone the case was opened. And def't further claims that said decree is final unless revised on appeal, unless the same is changed by said newly discovered evidence, that said pretended newly discovered evidence is only cumulative & cannot therefore effect or change the decree.

P. B. STETTS,
Def't's Att'y.

149 *Order on defendant's motion.—Filed Nov.* 28, 1877.

GEORGE A. ARMES, COMPL'TT,
vs. } In equity. No. 5359.
OTIS BIGELOW, DEFENDANT.

On reading and filing, the defendant's motion this day filed "to strike out all the testimony introduced, relating to, or tending to prove a contract in this suit resting in parol," and also his motion likewise filed this day, "that this suit be now heard upon the evidence which has been introduced since the former hearing and decree," be, and the same are, this 28th day of November, 1877, overruled.

By the court.

150 *Decree.—Filed December 3rd,* 1877.

In the supreme court of the District of Columbia, this 3rd day of December, 1877.

GEORGE A. ARMES, PL'FF,
vs. } Equity docket 16. No. 5359.
OTIS BIGELOW, DEF'T.

This cause came on to be further heard at this term, upon the bill, answer, and testimony, and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz: That the cause be, and it is, dismissed without costs; except that the def't recover of the plaintiff the costs of rehearing.

By the court.

151 *Order for appeal.*

GEORGE A. ARMES *vs.* O. BIGELOW ET AL. } No. 5359. Doc. 16.

The plaintiff enter' an appeal to the court in general terms from the decree of December 3rd, 1877, of this equity court in special term.

(Signed) C. H. ARMES,
Sol. for Pl'ff.

Appeal or order entered.
By the cl.

152 *Undertaking for appeal by plaintiff.—Filed Dec. 27th, 1877.*

In the supreme court of the District of Columbia, the 22 day of Dec., 1877.

GEORGE A. ARMES, PLAINTIFF, *vs.* OTIS BIGELOW ET AL., DEFENDANT. } No. 5359.

The plaintiff having appealed to the general term from the decree pronounced herein on the 3rd of December, 1877, in the equity court, and Josiah O. Armes, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

GEO. A. ARMES, *Appellant.*
JOSIAH O. ARMES, *Surety.*

Approved:

H. WYLIE.

153 *Decree in general term for specific performance & reversing decree below, &c.—Filed Oct. 25, 1878.*

In the supreme court of the District of Columbia, sitting in banc.

GEORGE A. ARMES *vs.* OTIS BIGELOW AND MARY R. BIGELOW. } Equity cause No. 5359.

This cause came on to be heard on appeal from the decree made herein on the 3ed day of December, A. D. 1877, and was argued by counsel for the respective parties, whereupon on consideration thereof it is this 25th day of October, A. D. 1878, ordered, adjudged, and decreed as follows: That the said decree be and is hereby reversed, except as to the defendant, Mary R. Bigelow, and as to her the said decree is affirmed. That the defendant, Otis Bigelow, do execute and deliver to the plaintiff within 30 days from this date, a good and sufficient deed conveying a valid title to the house and lot on Delaware avenue, in the city of Washington, D. C.,
154 described in the second paragraph of the plaintiff's bill of complaint as part of lot fourteen in square numbered seven hundred and twelve (712), beginning for the same on the west line of Delaware

avenue at a point fifteen feet 8 inches from the southeast corner of said lot and running thence northwestwardly at right angles to said avenue one hundred and fifteen feet; thence south fifteen feet to a point 115 feet from said avenue; thence one hundred and fifteen feet to a point on said avenue fifteen feet southerly from the beginning, and thence to the beginning;" also that the defendant, Otis Bigelow, do execute and deliver to the plaintiff, within 30 days from this date, a good and sufficient deed conveying a valid title to the farm in Fairfax County, Virginia, described in the second paragraph of said bill of complaint as "beginning at A, a stake on the northwest side of the old Alexandria & Church roads, and pointed out by one Elbye as the place, the corner called for formerly stood; thence with the eastern boundary of the Church road, N. 19½° E., 78 poles; thence crossing said road with
155 Farr's line N. 24½° E., 19 poles & 5 links to a stake in said line; N. 72° west, 52 po. to a stake in a field; thence N. 41¾° W., 42 poles, to a stake & pile of stones in the out line, a boundary of W. T. Rumsee land; thence with said boundary S. 49° west, 131 poles & 5 links to a stake and pile of stones near Popeshead Run and on the northeast side of the aforementioned old Alexandria road; thence with said road the meanders thereof and binding therewith S. 56½° E., 45 poles & 12 links; S. 62° E., 27 poles & 15 links to the beginning;" and that said Otis Bigelow do also deliver to the plaintiff possession of said house and said farm. That the defendant, Otis Bigelow do pay to the plaintiff the sum of $20 as the balance of the consideration remaining unpaid, and that the plaintiff recover his cost of this suit from which decree the defendant prays an appeal to the Supreme Court of the United States, which is allowed, upon giving bond in the sum of three thousand dollars.

By order of the court.

D. K. CARTER,
Chief Justice.

156 *Notice of motion.—Filed Nov.* 9, 1878.

In the supreme court of the District of Columbia.

GEORGE A. ARMES
vs.
OTIS BIGELOW. } In eq. No. 5359.

To George A. Arms or his counsel:

You will take notice that on Saturday, the 9th inst., I will apply to the judge of the supreme court of the District of Columbia, setting in equity, for the approval of the bond for an appeal to the Supreme Court of the United States in the above-entitled cause.

The surety offered is Charles L. DuBois, residence, College Hill, District of Columbia.

S. S. HENKLE,
Counsel for Def't.

NOV. 7TH, 1878.

Service acknowledged.
Nov. 7th, 1878.

C. H. ARMES,
Sol. for Pl'ff.

157 In the supreme court of the District of Columbia. The 1st day of November, 1878.

GEORGE A. ARMES
vs. } No. 5359. Eq. doc. 16.

Know all men by these presents, that we, Otis Bigelow and Charles L. DuBois, are bound unto the above-named George A. Armes, in the sum of three thousand dollars, to be paid to the said George A. Armes, his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this first day of November, 1878.

Whereas the above-named Otis Bigelow et al., has prosecuted an appeal to the Supreme Court of the United States to reverse
158 the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now therefore, the condition of this obligation is, that if the above-named Otis Bigelow et al., shall prosecute their said appeal to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

OTIS BIGELOW. [SEAL.]
CHARLES L. DUBOIS.

Sealed and delivered in presence of—

NOV. 9TH, 1878.

Approved:

McARTHUR,
Justice.

159 AUTHENTICATON OF RECORD.

Clerk's certificate.

CLERK'S OFFICE,
Supreme court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 7th day of October, 1879.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk.*

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 7th day of Oct., 1879.

[SEAL.] D. K. CARTTER,
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 7 day of Oct., 1879.

R. J. MEIGS, *Clerk*,

[SEAL.] By R. J. MEIGS, JR.,
Assistant Clerk.

(Indorsement on cover:) No. 556. Otis Bigelow, appellant, vs. George A. Armes. Dist. of Columbia, sup. court. Filed 7th October, 1879.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

OTIS BIGELOW, APPELLANT,
vs.
GEORGE A. ARMES. } No 556.

BRIEF OF APPELLEE ON MOTION TO DISMISS; MOTION, NOTICE, AFFIDAVITS AND ACKNOWLEDGEMENT OF SERVICE.

C. H ARMES,
Solicitor for Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

OTIS BIGELOW, APPELLANT,
vs.
GEORGE A. ARMES. } No. 556.

And now comes the said George A. Armes, the appellee in this cause, and moves the court to dismiss this appeal; and for cause of this motion shows that the property involved in the decree of the court below, from which this appeal is taken, is not, and was not at the date of said decree, of the value of two thousand five hundred dollars, and therefore this Court has not jurisdiction of this cause. Also because no proper appeal bond has been filed.

C. H. ARMES,
Attorney for Appellee.

To S. S. HENKLE,
Solicitor for Appellant:

Take notice that the above motion will be called up and submitted to the court on Monday, the 7th day of March, 1881.

C. H. ARMES,
Solicitor for Appellee.

Service of copies of the above motion, notice, brief of appellee's solicitor, and affidavit's of Warner, Wooster and Broadwater, and the appellee, acknowledged this 12th day of Feb'y, 1881.

S. S. HENKLE,
Sol. for Appellant.

Brief for Appellee on Motion to Dismiss.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

This is a motion by the appellee to dismiss the appeal

for want of jurisdiction, as the matter in dispute does not exceed $2,500. (R. R. Co. v. Trook 100 U. S., 112.)

The decree appealed from, is, that Otis Bigelow convey to the appellee a certain house and lot in the District of Columbia, and a certain farm (of 70 acres, more or less,) in Fairfax county, Virginia, and pay him twenty dollars in money. (Rec. pp. 48–9.)

Without a release of the dower right of the wife of said Otis, the value of said real estate is stated on the oaths of competent, disinterested persons to be not exceeding $$1,050. (Post, pp. 4, 5, 6.) The appellee's affidavit is filed herewith, (Post, p. 7,) in which he states that it does not in his judgment exceed $1,700

The value of said real estate is not stated in the evidence, and nothing in the record indicates that the value, or estimated value, of said real estate, *with a perfect title*, exceeds $2,500.

The appeal bond vouches for the prosecution of an appeal in which "Otis Bigelow et al." are appellants, (Rec. 50) ; whereas *but one person*—presumably Otis Bigelow—appealed from the aforesaid decree. (Rec. 49.)

A fuller statement of the case is as follows :

The appellee was complainant below, and filed his bill against Otis Bigelow, the appellant, and his wife, Mary R. Bigelow, for specific performance of an agreement, praying for a conveyance to him of the real estate described in said decree, and payment of said money ; and alleging full performance of his (complainant's) part of said agreement—which was that he would and did convey to said Otis Bigelow certain other property.

The bill stands dismissed as to the wife, and the decree for conveyance, etc., is against Otis Bigelow only, and does not disturb the right of dower of his wife. (2 Scrib-

ner on Dower, 299; Wiswall vs. Hall, 3d Paige, 313; Richmond vs. Robinson, 12 Mich., 193.)

The value of the property decreed to the complainant determines the jurisdictional question raised.

Gordon vs. Ogden, 3 Pet., 33.
Walker vs U. S, 4 Wall., 163.
R. R. vs. Trook, cited.

The bill alleges an agreement with said Otis that he would convey the said property to complainant, and that the deeds were to be given with release of his wife's dower right. (Rec. 4, paragraph 11.) Also that said Otis Bigelow *prepared* deeds of said property to complainant, in which he named $1,500 as the consideration for said house in Washington, and $1,000 as the consideration for said farm. (Rec. 3, par. 5.)

Also that, of the consideration for the property *which he conveyed to said Bigelow*, "there remains unpaid in value $2,520, to which the plaintiff is now entitled, and which sum said Otis Bigelow ought, in good conscience and justice, to pay to the plaintiff *for his said property*, or convey to him said property," (the property here in question.) Rec. 4, par. 9. In the 3d prayer (Rec. 5,) complainant prayed a conveyance of said property, or, in default thereof, payment of $2,520, "as the balance of unpaid purchase money for said property sold to said Otis Bigelow by the plaintiff, or such other sum as may in the proper manner be ascertained to be just and right in the premises." It is respectfully submitted that the above statements do not indicate *the value of the property in question described in the decree*. In complainant's testimony he states that in the transaction he accepted said property in Washington at $1,500, (Rec. 21); and if the valuation at which he took this parcel is to be taken as its actual value on a jurisdictional question, then, it is respectfully urged that a perfect title was contemplated, and not the mere title of

a married man, unaccompanied by a relinquishment of his wife's dower right.

Complainant had not seen the farm in Virginia when this suit was commenced, but took it upon representations made by others, and he values it at not exceeding $6 per acre, or $420. (See affidavit of appellee, post. p. 7.)

Affiants Wooster and Broadwater—whose official duties under the laws of Virginia (Code of 1860, p. 191, secs. 18-19,) are to assess land when certain changes of title occur—value said farm at not exceeding five dollars per acre without relinquishment of the dower right of appellant's wife. (Post. pp. 5-6.)

Respectfully submitted,

C. H ARMES,
Solicitor for Appellee.

DISTRICT OF COLUMBIA,
County of Washington:

Brainard H. Warner, being duly sworn, deposes and says that he is a real estate agent, and has carried on business as such in the city of Washington and District of Columbia for more than ten years last past. That he is well acquainted with the value of real estate in all parts of said city and District. That he has had large experience in and knowledge of the cost of building materials and of building dwelling houses That he knows the house and premises No. 1138 Delaware avenue, northeast, in said city, and the value thereof, and has known the same for several years past, and is acquainted with the parties to equity suit No 5359, in said District, wherein said property is involved. That said house is a small frame dwelling, and the cost of building it at the current prices of labor and materials in October, 1878, would not, in his judgment, have exceeded $700. That in his judgment the value of said house and lot, without a relinquishment of the dower right of the owner's wife, does not, and did not at any time in the year 1878, exceed $700; and that, with a perfect title, the value of said property did not exceed $900.

BRAINARD H. WARNER.

Sworn and subscribed before me this 10th day of February, 1880.

[SEAL.] JNO. W. SIMS,
Notary Public.

STATE OF VIRGINIA,
County of Fairfax, ss:

Frank Wooster, of lawful age, being duly sworn, deposes and says that he is a resident of, and has resided in, the county and State aforesaid for many years. That he has for more than six years last past held the office of Commissioner of Revenue in and for said county. That he has read the decree of the Supreme Court of the District of Columbia in general term, dated the 25th day of October, 1878, in the cause entitled George A. Armes vs. Otis Bigelow and Mary R. Bigelow, equity cause No. 5359, as the same appears in the transcript of record in the Supreme Court of the United States No. 556, Otis Bigelow, appellant, vs. George A. Armes, appeal from the Supreme Court of the District of Columbia. That he has for many years been personally acquainted with the value of lands in and throughout said county, and with the prices for which sales thereof have been made. That he well knows the land on the northwest side of the old Alexandria and Church roads, in the county and State aforesaid, described by metes and bounds in said decree; that his residence is about one mile therefrom. That in the opinion of affiant, said land is not now worth more, and was not at the date of said decree worth more than five (5) dollars per acre, without a release or other proper relinquishment of the right of dower of the wife of the owner thereof. That at a fair sale of said land with a good and perfect title with release of dower, affiant believes from his knowledge of said land and of real estate sales, and transactions in this vicinity, said farm would not bring over eight dollars ($8) per acre.

FRANK WOOSTER.

Sworn to before me this 7th Feb'y, 1881, and I certify that the aforesaid affiant is personally well known to me to be a person of good character and entitled to belief.

Given under my hand and official seal.

[SEAL.] F. W RICHARDSON.
Clerk Fairfax Co. Ct. Va.

STATE OF VIRGINIA,
County of Fairfax:

Richard F. Broadwater, of lawful age, being duly sworn, deposes and says: That he is a resident of the county and State aforesaid, and holds the office of Commissioner of Revenue in said county. That he has for many years past been acquainted with the value of lands in and throughout said county, and with the prices for which sales thereof have been made.

That he has read the decree of the Supreme Court of the District of Columbia, in general term, dated the 25th day of October, A. D. 1878, in the cause entitled George A. Armes vs. Otis Bigelow and Mary R. Bigelow, equity cause No. 5359, as the same appears in the transcript of record in the Supreme Court of the United States, No. 556, entitled Otis Bigelow, appellant, vs. George A. Armes, appeal from the Supreme Court of the District of Columbia.

That he well knows the land on the northwest side of the old Alexandria and Church roads, in the county and State aforesaid, described by metes and bounds in said decree.

That, in the opinion of affiant, said land is not now worth more, and was not at the date of said decree worth more, and would not at a fair sale sell for more than five (5) dollars per acre, without a release or other proper relinquishment of the right of dower of the wife of the owner thereof.

That at a fair sale of said land with a good and perfect title, affiant believes from his knowledge of said land and of real estate sales and transactions in the vicinity, said farm would not bring over ten dollars per acre, if that much.

R. F. BROADWATER.

Sworn to before me this 7 Feb., 1881, and I certify that the aforesaid affiant is personally well known to me to be a person of good character and entitled to belief.

Given under my hand.

F. W. RICHARDSON,
Clerk Fairfax Co. Ct., Va.

STATE OF TEXAS,
County of Menard, ss:

Personally appeared George A. Armes, who, being by me duly sworn, deposes and says that he is an officer in the United States Army, stationed at Fort McKavett, Texas. That he is the identical George A. Armes, who is complainant in an original bill of complaint filed January 23, 1877, in the Supreme Court of the District of Columbia, in equity, against Otis Bigelow and wife, the cause being entitled George A. Armes, plaintiff, vs. Otis Bigelow and Mary R. Bigelow, defendants, and numbered 5359, which said cause is now pending on appeal to the Supreme Court of the United States, and is there entitled Otis Bigelow, appellant, vs. George A. Armes, and numbered 556 on the docket of the present term, according to the printed record thereof. That, in the opinion of affiant, the real estate involved in the final decree of the Supreme Court of the District of Columbia, in general term, from which said appeal is now pending, being the house and lot numbered 1138 Delaware avenue northeast, in Washington, D. C., and the farm in Fairfax county, Virginia, containing seventy acres, more or less, described by metes and bounds in said decree, did not, at the date of said decree, exceed in value the sum of $1,700, exclusive of the dower right, and without a release or other bar of the dower right of said Mary R. Bigelow, then existing or held by her as the wife of said Otis Bigelow. That when he commenced said suit he had not seen the said land in Virginia, and the valuation which he then placed upon it was based upon representations made to him by others to whom he had been referred by said Bigelow; and affiant says that said valuation exceeded by far the intrinsic or market value of said farm; and he has since learned, and says that, to the best of his judgment, said land would not at that time have sold for more than $6 per acre or $420 for the entire tract in open market, in lawful money of the United States.

C A ARMES,
Capt. 10th Cav., B'v't Maj. U. S. A.

STATE OF TEXAS.
Menard County:

Before me, H. J. M. Bridge, a notary public in and for said county, this day came Captain G. A. Armes, to me well known, who upon his oath deposes and says that the within affidavit is right and just, and that he signed the same for all intents and purposes therein set forth and expressed.

Witness my official seal and signature this the 22d day of January, A. D. 1881.

[SEAL.] H. J. M. BRIDGE,
Notary Public Menard County, Texas.

In the Supreme Court of the United States.

OTIS BIGELOW, Appellant,
vs.
GEORGE A. ARMES. } No. 556.

Reply of Appellee to Argument of Appellant's Counsel, on Motion.

1. Appellant does not claim *as a fact* that the value of the property mentioned in the decree exceeds $2,500.

2. Burden of proof to show value is on appellant. 10 Pet., 160.

3. Position taken by appellant—that appellee fixed the value of the property in his bill—is erroneous. The allegations thus relied upon afford at most, only a basis for an *inference* as to value, (and they contemplate a perfect title,) for it is nowhere stated by either party that the property *is of the value of* $2,500, and the contrary is *expressly stated* in the affidavits filed. The court will not infer from vague statements in the pleadings—especially from unnecessary statements—that the amount is sufficient to give jurisdiction. If the amount was sufficient appellant might have shown the fact by affidavits. 4 Dal., 20.

4 It is not pretended that the appeal bond is sufficient, nor is offer made to file one.

C. H. ARMES,
Attorney for Appellee.

OFFICE SUPREME COURT U.S.
FILED
MAY 28 1881
JAMES H. MCKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

October Term, 1880.

———:)o(:———

OTIS BIGELOW, APPELLANT,

vs.

GEORGE A. ARMES, APPELLEE.

———:)o(:———

ON MOTION TO DISMISS APPEAL.

Brief of S. S. HENKLE, Counsel for Appellant.

The learned counsel for the motion seems to think that the matter in dispute in this court is simply the value of the two pieces of property, which by the decree of the Supreme Court of the District of Columbia, in General Term, the appellant was ordered to convey to the appellee, and the $20 in money. See Rec., pp. 48 and 49.

And he has taken affidavits to prove that these are not of the value of $2,500.

It is true that the decree appealed from does no more in terms than order the appellant to convey to the appellee the two pieces of property therein described, and to pay him $20 in money.

If these were the sole matters involved in the suit the counsel would, undoubtedly, be right if the parties had not themselves fixed the value of the two pieces of property, with the $20 in money, at $2,520.

The court will see that the last clause of the decree says: "That the defendant, Otis Bigelow, do pay to the plaintiff the sum of $20 as the balance of the *consideration remaining unpaid*," &c.

The decree does not enlighten us as to what part of the consideration was paid before, nor how it was paid, nor what it was paid for. Nor are we advised by the decree why Bigelow is ordered to convey the two parcels of real estate described therein. But the pleadings furnish the lacking information.

The second paragraph of the appellee's bill sets out that he was the owner of a certain house and lot on 8th street, in the city of Washington, upon which there was an encumbrance of $2,000. That on the 22d day of November, 1876, he sold the said house and lot, subject to said encumbrance, to Otis Bigelow, at a price or valuation of $5,025." That said $2,000 encumbrance was assumed as a part of the consideration, and that in addition to said $2,000 Bigelow agreed to give the appellee the two parcels of real estate described in the decree, and $525 in money. That the agreement was evidenced by an informal pencil memorandum.

In the third paragraph of the bill the appellee sets out that in pursuance of said agreement, on the 24th and 25th days of November, 1876, Bigelow paid him "several sums of money, *amounting in all to* $505, *as a part of the consideration for the plaintiff's said property.*"

In the fourth paragraph of the bill the appellee sets out that on or about the 24th day of November, 1876, in pursuance of the said agreement, he conveyed the said 8th street property to the appellee, subject to the encumbrance of $2,000.

The remaining paragraphs of the bill set forth that Bigelow failed to comply with the contract on his part, although he had taken possession of the 8th street property and was drawing the rents therefrom, and concluding with the prayers—among others that Bigelow be decreed to specifically perform his contract by making conveyances of the two pieces of property he had agreed to convey to the appellee, and to pay him the $20 remaining unpaid of the money part of the consideration; or that in default thereof to be decreed *to pay to the appellee* $2,520, *as the balance of the unpaid purchase* money for said property sold to said Otis Bigelow by the plaintiff. Rec., pp. 5 and 6.

It will thus be seen that the appellee himself fixes the value of the property and money he was yet to receive from the appellant (being the same named in the decree) at $2,520; and he had already received $2,000, the encumbrance assumed by Bigelow, and $505 in money.

Bigelow, in his answer, commencing on p. 7 of the record, denies that he made any contract with the appellee to purchase his property, but admits that they negotiated about an exchange of property. He admits that he gave the appellee $505 in money, but denies that it was by way of payment upon the contract of purchase, but says that yielding to the appellee's importunities, and in sympathy for his necessities, and in anticipation of a possible exchange of property, he loaned him $505 and took a deed for the 8th street property as security for the repayment thereof in case they did not trade, and that for safety he put the deed upon record.

Testimony was taken by both parties, and upon the final hearing in the equity court the bill was dismissed, but

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